(37,444)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 6

LOCAL 167 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA, CARL FIRESTONE, CHARLES GERSHOWITZ, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

VOL. I

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IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

Equity. No. 52-30

UNITED STATES OF AMERICA, Petitioner,

against

GREATER NEW YORK LIVE POULTRY CHAMBER OF COMMERCE et al., Defendants

AMENDED PETITION—Filed April 16, 1930

To the Honorable Judges of the District Court of the United States for the Southern District of New York:

The United States of America, by Charles H. Tuttle, United States Attorney for the Southern District of New York, and by John Lord O'Brian and Walter L. Rice, acting under the direction of the Attorney General, brings this amended petition against the persons named hereafter as defendants.

I

Purpose of Suit

This proceeding is brought under the provisions of Section 4 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," (26 Stat. 209), commonly known as the Sherman Anti-Trust Act, to prevent and restrain defendants hereafter named from further engaging, in this district and elsewhere in the United States, in violation of Sections 1 and 2 of said Act of Congress, in the conspiracy in restraint of interstate trade and commerce in the distribution of live and freshly slaughtered poultry, which is hereafter more particularly described.

[fol. 3] II

Description of Interstate Commerce in Live Poultry

Origin of Poultry

(1) For many years last past a large and important part of the trade and commerce among the several States of the United States has consisted in the shipment of live poultry from, among others, the States of New Hampshire, Massachusetts, Rhode Island, Connecticut, Pennsylvania, Maryland, Virginia, Minnesota, Wisconsin, Iowa, Illinois, Indiana, Ohio, Missouri, North Carolina, Kansas, Tennessee, Kentucky, Oklahoma, Texas, Arkansas, and Mississippi, to and into the States of New York and New Jersey and from the State of New York to and into the State of New Jersey and from the State of New Jersey to and into the State of New York, which said trade and commerce is now here described in further detail, that is to say:

Shippers. Receivers. Marketmen

(2) Live poultry is shipped by a large number of persons, firms and corporations (known to the trade and hereafter described as shippers) from States other than New York and New Jersey into New York and New Jersey to persons, firms and corporations, known to the trade and hereafter described as commission merchants or receivers, who, in turn, sell and deliver said poultry as agents for and on behalf of said shippers. In some instances the said receivers have purchased such poultry in whole or in part in said States other than New York and New Jersey, and have shipped the same into New York and New Jersey, either wholly on their own account or by way of joint venture with the said shippers. Receivers who receive the same in the State of New York sell and ship the poultry so received, in some instances to persons, firms and corporations in the State of New York who are dealers in freshly slaughtered poultry (known to the trade and hereafter described as marketmen) and, in some instances, from the State of New York into the State of New Jersey to marketmen having their places of

business therein. Receivers who receive poultry in the State of New Jersey sell and ship the poultry so received, in some instances, to marketmen in the State of New Jersey, and in some instances, from the State of New Jersey into the State of New York to marketmen having their places of business therein. Marketmen having their places of business in the State of New Jersey pur- [fol. 4] chase live poultry, in some instances, from receivers in the State of New Jersey and, in some instances from receivers in the State of New York, and ship the same from the State of New York into the State of New Jersey. Marketmen having their places of business in the State of New York purchase live poultry, in some intances, from receivers in the State of New York and, in some instances, from receivers in the State of New Jersey, and ship the same from the State of New Jersey into the State of New York.

Poultry Dealers and Butchers

(3) Marketmen having their places of business in the State of New York, sell and (after first causing the same to be slaughtered in their places of business) ship the poultry so purchased, in some instances direct to consumers and, in some instances, to persons, firms and corporations engaged in the business of selling freshly slaughtered poultry (known to the trade and hereafter described as poultry dealers) and butchers having their places of business in the State of New York and, in some instances, from the State of New York into the State of New Jersey to poultry dealers and butchers having their places of business therein. Marketmen having their places of business in the State of New Jersey, sell and (after first causing the same to be slaughtered in their places of business) ship the poultry so purchased, in some instances, direct to the consumers and, in some instances, to poultry dealers and butchers in the State of New Jersey and, in some instances, from the State of New Jersey into the State of New York to poultry dealers and butchers having their places of business therein. Poultry dealers and butchers having their places of business in the State of New Jersey purchase the said poultry from marketmen in the State of New Jersey and, in some instances from marketmen in the State of

New York and (after first causing the same to be slaughtered in the places of business of the said marketmen) ship the same from the State of New York into the State of New Jersey. Poultry dealers and butchers having their places of business in the State of New York purchase the said poultry from marketmen in the State of New York and, in some instances, from marketmen in the State of New Jersey and (after first causing the same to be slaughtered in the places of business of the said marketmen) ship the same from the State of New Jersey into the State of New York.

[fol. 5] (4) Said shippers, receivers, marketmen, poultry dealers and butchers are so numerous that it is impracticable to set forth their names herein.

Area Affected by Restraint

(5) The receivers as aforesaid, all marketmen, poultry dealers and butchers as well as a great majority of all of the ultimate consumers of the said poultry are located in the Cities of New York, Newark, Hoboken, Jersey City, Paterson and in other parts of the States of New York and New Jersey, situated within, to-wit, thirty miles of the boundaries of the City of New York and forming what is commonly known, and is hereafter described as the Metropolitan Area.

Continuity of Interstate Commerce

(6) Substantially all of such live and freshly slaughtered poultry is sold and deliveries are effected within 24 hours after the arrival of the said poultry in the Metropolitan Area, said poultry passing through the various channels above described, from the shipper to the possession of receivers, marketmen, poultry dealers and butchers (and from receivers, marketmen, poultry dealers and butchers to the ultimate consumer) continuously and without substantial delay other than such as is occasioned by unloading, crating, inspection, transporting and slaughtering. Throughout the period above described there has been a constant and continuous flow of shipments of live poultry (and the same poultry in the form of freshly slaughtered poultry) in commerce among the several States from States other than New York and New Jersey to and into said

Metropolitan Area, and from that part of the Metropolitan Area located in the State of New York into that part of the Metropolitan Area located in the State of New Jersey, and from that part of the Metropolitan Area located in the State of New Jersey into that part of the Metropolitan Area located in the State of New York; and so through the aforesaid channels of trade from the shipper to the consumer thereof, the value of the poultry so shipped being in excess of $50,000,000 annually.

III

Description of Certain Defendants

(7) Whenever in this amended petition any person is described by means of an initial or a name other than his true name, such true name is to the petitioner unknown.

[fol. 6] Chamber of Commerce

(8) At all time hereafter mentioned, the greater New York Live Poultry Chamber of Commerce, hereafter described as the Chamber of Commerce, was and now is a voluntary association organized and existing under and by virtue of the laws of the State of New York with an office and place of business at 429 West 14th Street, City, County, and State of New York. A large majority of the marketmen having places of business within the City of New York were and now are members of the Chamber of Commerce.

(9) Commencing on or about May 9, 1927, and continuously thereafter until October 1, 1928, Benjamin Simon was Supervisor of the Greater New York Live Poultry Chamber of Commerce and Samuel Lipkin was an accountant in its employ.

(10) At all times hereafter mentioned the following persons, among others, were either in their own right or through the business entities which they controlled, members of the Chamber of Commerce and at all time hereafter mentioned were engaged in business as marketmen: Barney Azwolinsky; Morris Azwolinsky; Al Berman; Herman Berman; Charles Bistretsky; Abraham Bloom; Isidore Bloom; Morris Bloom; Isidore Blumenfeld; Morris Brown (of the Irving Poultry Co.); Morris Chast; Jacob

Damsky; Morris Damsky; Harry Dworkin; Ida Frank; Isidore Frank; Hyman Frankfater; Jacob Frankfater; Abraham Franzel; Samuel Friedman; Morris Frisman; Morris Gerber; Max Glantz; Max Gold, Samuel Gold; Abraham Goldberg (of the Pitt St. Live Poultry Market); Samuel Goldstein; Isidore Gordon (of the F. G. T. Live Poultry Market); Morris Gordon; Isaac Greenstein (of the Tremont Live Poultry Market); Kalman Gross; Hyman Haber; Isidore Haber; Abraham Harrison; Samuel Harrison; Morris Hellman; Dave Hirshon; L. Hornstein (of Hornstein & Spatz); Samuel Isaacson; Morris Joselson; Samuel Kadin; Isaac Kaplan (of the Prospect Poultry Co.); Leo Kassoff; Morris Klieger; Jacob Koslow; Alter Kupersmith (of K. Gross, Inc.); Simon Lapof; Goodman Levy; Isaac Lipschitz; Samuel Mamber; Joseph Manne; Samuel Manne; Joe Mines; Jacob Mintz; Charles Mirotznik; Hyman Nierenberg; Abraham Pepper; Hyman Raby; [fol. 7] Jacob Reisner; Max Rosen; Harry Rubin; Samuel Sahn; Ole Salthe (of the Dexter Poultry Co., Inc.); Louis Schiller; Joseph Scull; William Simon; Max Sokoloff; Paul Sosnik; Sidney Sosnik; Louis Spatz; Aaron Steinberg (of the Monroe Poultry Co.); Jacob Turkowitz (of the F. G. T. Live Poultry Market); Louis Weidberg; Max Wolas; Abraham Wolfe; Irving Yarmouth (associated in business with Kalman Gross).

Chauffeurs' Union

(11) Local 167 of the International Brotherhood of Chauffeurs, Teamsters, Stablemen, and Helpers of America, hereafter sometimes referred to as the Chauffeurs' Union, is a voluntary association, organized and existing under and by virtue of the laws of the State of New York, having an office in the Borough of Manhattan in the City of New York. Virtually all persons engaged as employees in the handling, crating and trucking of live poultry after its arrival in that portion of the Metropolitan Area lying within the State of New York are members of the said local. Their services are essential to and they are, in fact, engaged in the transportation of live poultry and the handling thereof necessary and incidental thereto from receivers to marketmen and from marketmen to poultry dealers and butchers.

(12) At all times hereafter mentioned the following persons were officers and employees of the Chauffeurs' Union and occupied the positions set forth opposite their respective names:

David Kaufman—Secretary-Treasurer and Business Representative;
Arthur Herbert, alias "Tpotsie" Herbert—Delegate;
Harry Schomer—Delegate.

Shochtim Union

(13) At all times hereafter mentioned the Official Orthodox Poultry Slaughterers of America, Inc., was and now is a corporation organized and existing under and by virtue of the laws of the State of New York. A majority of consumers of live poultry are persons of the Jewish faith who will not purchase the poultry aforesaid unless it is slaughtered in accordance with Jewish dietary laws. A person competent under the Jewish dietary laws so to slaughter poultry is known to the trade as a shochet (plural shochtim). The said poultry is slaughtered by the said [fol. 8] shochtim in the employ of the marketmen. A great majority of the said shochtim are members of the Official Orthodox Poultry Slaughterers of America, Inc.

(14) From the commencement of the conspiracy and continuously thereafter until October 1, 1928, Kalman Shapiro was President of the Official Orthodox Poultry Slaughterers of America, Inc., and from the commencement of said conspiracy and continuously thereafter until the filing of this petition the following persons were officers and employees of the Official Orthodox Poultry Slaughterers of America, Inc., and occupied the positions set forth opposite their respective names:

Charles Herbert—Delegate;
Joseph Weiner—Director and Delegate.

Individual Defendants

(15) Barney Azwolinsky; Morris Azwolinsky; Al Berman; Herman Berman; Charles Bistretsky; Abraham Bloom; Isidore Bloom; Morris Bloom; Isidore Blumenfeld; Morris Brown (of the Irving Poultry Co., Inc.); Mor-

ris Chast; John J. Conlin; Jacob Damsky; Morris Damsky; Harry Dworkin; Carl Firestone; Hyman Fishman; Ida Frank; Isidore Frank; Hyman Frankfater; Jacob Frankfater; Abraham Franzel; Samuel Friedman; Morris Frisman; Morris Gerber; Charles Gershowitz; Max Glantz; Max Gold; Samuel Gold; Abraham Goldberg (of the Pitt Street Live Poultry Mkt.); Samuel Goldstein; Isidore Gordon; Morris Gordon; Greater New York Live Poultry Chamber of Commerce; Isaac Greenstein (of the Tremont Live Poultry Market); Kalman Gross; Hyman Haber; Isidore Haber; Abraham Harrison; Samuel Harrison; Morris Hellman; Arthur Herbert; Charles Herbert; Harry Herbert; Dave Hirshon; L. Hornstein (of Hornstein & Spatz); Samuel Isaacson; Morris Joselson; Samuel Kadin; Isaac Kaplan (of the Prospect Poultry Company); Leo Kassoff; David Kaufman (alias "David Silver"); Max Keslin; Morris Klieger; Jacob Koslow; Alter Kupersmith (of K. Gross, Inc.); Simon Lapof; Michael Lax; Goodman Levy; Samuel Lipkin; Isaac Lipschitz; Local 167 of the International Brotherhood of Chauffeurs, Teamsters, Stablemen & Helpers of America; Samuel Mamber; Joseph Manne; Samuel Manne; Morris Markman (alias "Nigger"); Joe Mast; Joe Mines; Jacob Mintz; Charles Mirotznik; Abe [fol. 9] Newman; Hyman Nierenberg; Official Orthodox Poultry Slaughterers of America, Inc.; Abraham Pepper; Hyman Raby; Jacob Reisner; Max Rosen; Joseph Rosenman (Secretary of the Official Orthodox Poultry Slaughterers of America, Inc.); Julius Rosenstein; Murray Rosenstein (alias "Moe"); Sidney Rosenstein; Harry Rubin; Samuel Sahn; Ole Salthe (of the Dexter Poultry Company, Inc.); Louis Schiller; Harry Schomer; Joseph Scull; Samuel Silverman; William Simon; Max Sokoloff; Paul Sosnik; Sidney Sosnik; Louis Spatz; Aaron Steinberg (of the Monroe Poultry Company); Jacob Turkowitz (of the F. G. T. Live Poultry Market); Louis Weidberg; Joseph Weiner; Meyer Weiss; Aaron Weissler (alias "Arke"); Max Wolas; Abraham Wolfe and Irving Yarmouth are hereby made defendants to this petition.

Representative Defendants

Greater New York Live Poultry Chamber of Commerce; David Hirshon, President; Louis Spatz, Vice-President; Max Rosen, Treasurer; Jacob Reisner, Assistant Treas-

; Max Wolas, Secretary; Louis Cohen, William Simon, Charles Mirotznik, Louis Weidberg, Louis Gerber, Samuel Mamber, Abraham Franzel, Morris Gordon, Leo Kassoff, Abraham Harrison, Samuel Sahn, Samuel Gold, Directors; are hereby designated as representatives of all persons, corporations and voluntary associations who, from May 9, 1927, to October 1, 1928, or any part of that time, were members of said Chamber of Commerce, or who paid dues or money in any form to said Chamber of Commerce, either directly or indirectly, or who were employed by said Chamber of Commerce or any of its responsible officers or directors to aid in the distribution, marketing or transportation of live or freshly slaughtered poultry in the Metropolitan Area, or to do any act in furtherance of the conspiracy, or who, as compensation for discontinuing or agreeing to discontinue their business in whole or in part, either directly or indirectly received money or other consideration from said Chamber of Commerce or its responsible officers or directors or any group or association of marketmen operating during the period aforesaid in any part of the Metropolitan Area under the direction or guidance of officers, directors or members of said Chamber of Commerce; and as representatives they are hereby made defendants, as are all members of the class whom they represent, said class constituting a group so numerous that it [fol. 10] would be impracticable to bring them all before the court.

Greater New York Live Poultry Chamber of Commerce; Samuel Sahn, President; William Simon, Vice-President; Jacob Reisner, Treasurer; Philip Milavsky, Assistant Treasurer; Max Wolas, Secretary; Louis Spatz, Max Rosen, Charles Mirotznik, Louis Weidberg, Samuel Mamber, Morris Gordon, Dave Hirshon, Abraham Harrison, Morris Brown, Louis Cohen, Abraham Franzel, Directors; are hereby designated as representatives of all persons, corporations and voluntary associations who are at the time of filing the amended petition herein members of said Chamber of Commerce or who are employed by said Chamber of Commerce or any of its responsible officers and directors to aid in the distribution, marketing or transportation of live or freshly slaughtered poultry in the Metropolitan Area, or who have any interest in the assets of said Chamber of Commerce; and as representatives they are

hereby made defendants, as are all members of the class whom they represent, said class constituting a group so numerous that it would be impracticable to bring them all before the court.

Local 167 of the International Brotherhood of Chauffeurs, Teamsters, Stablemen & Helpers of America, Samuel Silverman, President; David Kaufman, Secretary-Treasurer and Business Representative, Arthur Herbert, Delegate; and Harry Schomer, Delegate; are hereby designated as representatives of all persons who were members of said Local 167 from May 9, 1927, to October 1, 1928, or any part of that time, or who paid dues to said Local 167, or who were employed by said Local 167 to aid in the marketing, distribution or transportation of live or freshly slaughtered poultry in the Metropolitan Area during any part of the time aforesaid; and as representatives they are hereby made defendants, as are all members of the class whom they represent, said class constituting a group so numerous that it would be impracticable to bring them all before the court.

Local 167 of the International Brotherhood of Chauffeurs, Teamsters, Stablemen & Helpers of America, Samuel Silverman, President; David Kaufman, Secretary-Treasurer and Business Representative; Arthur Herbert, Delegate; and Harry Schomer, Delegate; are hereby designated as representatives of all persons who are at the time of filing this petition members of said Local 167, and as [fol. 11] representatives they are hereby made defendants as are all members of the class whom they represent, said class constituting a group so numerous that it would be impracticable to bring them all before the court.

IV

Conspiracy

(16) The defendants named in paragraph 15 together with divers other persons to the United States Attorney unknown (said defendants and other persons being hereafter collectively described as conspirators) well knowing all matters of fact herein set forth, beginning on or about May 9, 1927, and continuously thereafter, within the Southern District of New York, entered into and engaged in a

conspiracy intended to restrain, and which, in fact, was in restraint of the aforesaid trade and commerce among the several States of the United States and which has had the following objects and effects:

Objects of Conspiracy

To prevent, hinder and restrain the divers persons engaged in purchasing, selling and shipping live and freshly slaughtered poultry in commerce among the several States, as above set forth, from so purchasing, selling and shipping the same;

To prevent, hinder and restrain all persons, other than those selected and assigned by the conspirators, from selling and delivering live and freshly slaughtered poultry to poultry dealers and butchers;

To prevent, hinder and restrain the sale and delivery of live and freshly slaughtered poultry from all sources whatever to poultry dealers and butchers in the City of New York except at or above minimum prices and/or on conditions dictated, fixed and agreed upon by the conspirators;

To prevent, hinder and restrain poultry dealers and butchers, engaged in business within the City of New York, from selling and delivering live and freshly slaughtered poultry except at or above minimum prices and on conditions fixed and agreed upon by the conspirators;

To prevent, hinder and restrain all marketmen from obtaining live poultry from any source whatever, except under conditions dictated, fixed and agreed upon by the conspirators, and further to prevent marketmen from dis-
[fol. 12] posing of their live poultry, either as live poultry or in the form of freshly slaughtered poultry, except on conditions dictated, fixed and agreed upon by the conspirators.

Said conspiracy is now described in further detail, that is to say:

Allotment

(17) It has been a part of said conspiracy that the conspirators should allot, and pursuant to said conspiracy, the conspirators have allotted poultry dealers and butchers doing business within the City of New York to the various conspirators doing business as marketmen in the City of New York, each such poultry dealer and each such butcher

being assigned to one particular marketman from whom said poultry dealer or butcher should be and has been compelled by the conspirators, in the manner hereafter set forth, to purchase all his poultry. Said poultry dealers and butchers so allotted constitute a substantial majority of all the poultry dealers and butchers engaged in purchasing live and freshly slaughtered poultry in the City of New York; said poultry dealers and butchers so allotted being so numerous that it is impracticable to set forth their names and the names of many of said poultry dealers and butchers being to the petitioner unknown.

(18) It has further been a part of said conspiracy that the conspirators should eventually obtain the inclusion in the above described scheme of allotment of substantially all the poultry dealers and butchers engaged in purchasing live and freshly slaughtered poultry in the City of New York, and that the conspirators should compel, in the manner and by the means hereafter set forth, all poultry dealers and butchers who should, from time to time, be included in said scheme of allotment, to obtain live and freshly slaughtered poultry exclusively from the particular marketman to whom said poultry dealers and butchers should have been allotted as aforesaid, and that the conspirators should prevent and restrain said poultry dealers and butchers engaged in business within the City of New York from purchasing, and from attempting to purchase live and freshly slaughtered poultry from any sources whatever, either within or without the State of New York, other than from the particular marketman to whom said poultry dealers and butchers should have been allotted as aforesaid; and that the conspirators should prevent and restrain all marketmen, and all other persons, including both those [fol. 13] making sales and shipments from within and those making sales and shipments from without the State of New York, from selling and delivering, and from attempting to sell and deliver live and freshly slaughtered poultry to any poultry dealers and butchers doing business within the City of New York, other than in accordance with the above described scheme of allotment.

Price Control

(19) It has further been a part of the said conspiracy that the conspirators should prevent and hinder all poultry dealers and butchers doing business within the City of New York from purchasing and attempting to purchase live or freshly slaughtered poultry from any source whatever at prices lower than those dictated, fixed and agreed upon by the conspirators as aforesaid, and that the conspirators should prevent and restrain all marketmen and all other persons from selling live and freshly slaughtered poultry to any poultry dealers and butchers at prices lower than those dictated, fixed and agreed upon by the conspirators as aforesaid.

Retail Price Control

(20) It has further been a part of said conspiracy that all marketmen, poultry dealers and butchers located in the City of New York should be permitted by the conspirators to sell live and fresh slaughtered poultry only on the conditions and at or above the minimum prices fixed and agreed upon by the conspirators as aforesaid, and that the conspirators should prevent and restrain all marketmen, poultry dealers and butchers engaged in business in the City of New York from freely conducting their several businesses and from selling and delivering and from attempting to sell and deliver live and freshly slaughtered poultry to consumers except at or above the minimum prices and on the conditions fixed and agreed upon by the said conspirators.

Enforcement of Allotment

(21) It has further been a part of said conspiracy that if any of said poultry dealers or butchers should attempt to purchase or obtain live or freshly slaughtered poultry from any source other than the particular marketman to whom he should have been allotted as aforesaid, either from within or from without the State of New York, or should attempt to purchase or obtain live or freshly slaughtered poultry from any source whatever at lower prices or on conditions [fol. 14] other than those dictated, fixed and agreed upon by the conspirators as aforesaid, or if any marketman or other person other than the particular marketman to whom such

poultry dealer or butcher should have been allotted as aforesaid, should attempt to sell or deliver live or freshly slaughtered poultry to such poultry dealer or butcher or to aid such poultry dealer or butcher to obtain live or freshly slaughtered poultry, or if the particular marketman to whom said poultry dealer or butcher should have been allotted should fail to observe the prices and conditions fixed and agreed upon by the conspirators as aforesaid, or if the said poultry dealers or butchers should fail to observe the prices and conditions dictated, fixed and agreed upon by the conspirators as aforesaid, then, and in any of said events the conspirators in the manner and by the means hereafter described, should seek to prevent and should prevent the completion and fulfilment of such purchases, sales and deliveries, and should punish poultry dealers, butchers, marketmen or other persons for attempting to make or aiding in making such purchases, sales or deliveries and should threaten and intimidate and prevent such poultry dealers, butchers, marketmen and other persons from making similar purchases, sales or deliveries in the future.

Method of Carrying Out the Conspiracy

(22) It has further been a part of said conspiracy that the conspirators, in order to carry out the objects set forth in paragraphs (16) to (21) inclusive, and so to carry out the restraint of trade and commerce among the several States as aforesaid, should employ and the conspirators have, pursuant to such conspiracy, in fact employed divers means and methods including among others:

(a) threats of physical violence against poultry dealers, butchers, marketmen, shippers, receivers, and others (as well as against their families, customers, and employees);

(b) assaulting and beating poultry dealers, butchers, marketmen, and their families, customers and employees;

(c) attempting to create and creating throughout the industry generally and in the minds of persons engaged [fol. 15] therein a feeling of fear and terror for the purpose of preventing all persons from, in any manner, resisting the operation of the conspiracy aforesaid;

(d) forcibly detaining, destroying and damaging vehicles engaged in conveying live poultry both in interstate commerce and intrastate commerce for marketmen, poultry dealers and butchers, and others;

(e) cutting the tires of, and otherwise injuring such vehicles and their contents;

(f) destroying and damaging poultry being transported for shippers, marketmen, poultry dealers and butchers;

(g) placing bombs containing explosives, incendiary matter, and poisonous and suffocating gases in the places of business and vehicles of poultry dealers, butchers and marketmen;

(h) forcibly preventing and obstructing deliveries of poultry to and by marketmen, poultry dealers and butchers;

(i) instigating the refusal of the defendant Chauffeur's Union and its members to load, unload, convey, deliver or handle live and freshly slaughtered poultry;

(j) refusing by agreement and concerted action to deal with, or to sell live poultry to, or to buy live poultry from poultry dealers, butchers, marketmen, and receivers;

(k) setting fire to the stores, vehicles and goods of poultry dealers, butchers, marketmen and receivers;

(l) collecting and making levies from poultry dealers, butchers and marketmen, and from other persons (including persons opposed to and persons friendly to the carrying out of said conspiracy) for defraying the expenses of the conspirators in carrying out this conspiracy;

(m) using threats, violence, boycotts, refusals to load, and other means to the United States Attorney unknown, to enforce the payment of such contributions and levies;

(n) coercing marketmen to employ large numbers of employees in excess of their reasonable requirements under the guise of union regulations;

[fol. 16] (o) instigating the refusal of the defendant Shoctim Union and its members to slaughter poultry for poultry dealers, butchers and marketmen;

(p) assembling riotous and threatening gatherings near the places of business of marketmen, shippers, retailers and butchers;

(q) following and spying upon poultry dealers, butchers, marketmen, and upon their salesmen, solicitors, and truck drivers;

(r) paying large sums of money to marketmen and poultry dealers in return for agreements by them to discontinue business in whole or in part in the city of New York;

(s) employing persons known to the conspirators and to persons engaged in the poultry trade generally as "gangsters", for the purpose of carrying out the above described means and methods, and particularly for the purpose of intimidating, threatening, assaulting and beating such poultry dealers, butchers, marketmen and their families, customers and employees and injuring and destroying their property;

(t) and many other means and methods to the petitioner unknown.

(23) The said defendants and other conspirators, (by the methods and means hereinbefore described, have engaged in a combination and conspiracy to restrain and monopolize the aforesaid trade and commerce, have attempted to monopolize, and have monopolized the aforesaid trade and commerce in live and freshly slaughtered poultry, in violation of the Act of Congress of July 2, 1890, entitled "An Act to regulate trade and commerce against unlawful restraints and monopolies".

V

Threat of Continuing Conspiracy

(24) On August 20, 1928, your petitioner filed an information against 68 defendants, such defendants being substantially the same individuals and organizations as those herein named as defendants. Thereafter the said conspirators temporarily desisted from most but not all of [fol. 17] the acts alleged in paragraph 22, (a) to (s) inclusive, for such time as they should deem participation therein precarious; intending, nevertheless, to resume said

acts as soon as they should deem it safe to do so. Said conspiracy has never been abandoned by the defendants or any of them although the conspirators have suspended temporarily their activity thereunder.

(25) The Greater New York Live Poultry Chamber of Commerce, Local 167 of the International Brotherhood of Chauffeurs, Teamsters, Stablemen & Helpers of America, and the Official Orthodox Poultry Slaughterers of America, Inc., have been employed as essential instrumentalities in said conspiracy. All of these organizations are still in existence, none of them having been abandoned or dissolved, by the conspirators. The conspirators for the most part still control all of the important offices in said organizations and occupy strategic positions in the trade, rendering it possible for them to resume at will their illegal acts in furtherance of the conspiracy.

(26) Within the twenty years last past, the conspirators and their business predecessors have engaged in a series of similar or related conspiracies which have been continuous except for the temporary cessations inspired by successive federal, state and private investigations.

(27) Since August 20, 1928, and up to the time of filing the amended petition herein, the defendants, together with divers other persons to the petitioner unknown, have committed the overt acts described in clauses (a), (b), (d), (e), (f), (i), (l), (m), and (n) of paragraph (22), that is to say:

(a) threats of physical violence against poultry dealers, butchers, marketmen, shippers, receivers, and others (as well as against their families, customers and employees);

(b) assaulting and beating poultry dealers, butchers, marketmen and their families, customers and employees;

(d) forcibly detaining, destroying and damaging vehicles engaged in conveying live poultry both in interstate commerce and intrastate commerce for marketmen, poultry dealers and butchers, and others;

[fol. 18] (e) cutting the tires of, and otherwise injuring such vehicles and their contents;

(f) destroying and damaging poultry being transported for shippers, marketmen, poultry dealers and butchers;

(i) instigating the refusal of the defendant Chauffeurs' Union and its members to load, unload, convey, deliver or handle live and freshly slaughtered poultry;

(l) collecting and making levies from poultry dealers, butchers and marketmen, and from other persons (including persons opposed to and persons friendly to the carrying out of said conspiracy) for defraying the expenses of the conspirators in carrying out this conspiracy;

(m) using threats, violence, boycotts, refusals to load, and other means to the United States Attorney unknown, to enforce the payment of such contributions and levies;

(*m*) coercing marketmen to employ large numbers of employees in excess of their reasonable requirements under the guise of union regulations.

(28) Since August 20, 1928, and up to the time of filing the amended petition herein, said conspirators have maintained and continued the existence and operation of the Greater New York Live Poultry Chamber of Commerce for the sole purpose, and with the intention, of employing it as a device by which they may resume all of the illegal acts set out in the amended petition herein as soon as they may deem it safe to do so; and the said Chamber of Commerce and its representatives have collected, and are now collecting, large sums of money from the poultry marketmen, and other persons to the petitioner unknown, with the design and intention of using said sums in furtherance of their plan to revive all of the illegal acts set out in the amended petition herein.

(29) Since August 20, 1928, and up to the time of filing the amended petition herein, the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, its officers, representatives and members have continued the practice, alleged in the amended petition herein, of compelling marketmen to employ an excessive number of [fol. 19] workmen, and in addition thereto, have committed and are committing the following acts:

(a) In the event of the failure of marketmen to employ the number of workmen specified by the representatives of

said Chauffeurs' Union, they have prevented and are preventing said marketmen from loading poultry at the railroad terminals in the State of New York and the State of New Jersey and the commission houses in the State of New York.

(b) They have effectively prevented and are preventing said marketmen from obtaining poultry both in the State of New York and in the State of New Jersey, and from shipping said poultry from the State of New York into the State of New Jersey and from the State of New Jersey into the State of New York.

(c) They have destroyed vehicles and cut tires belonging to said marketmen and have employed threats against them and persons who have attempted to sell to them.

All of the acts described herein constituted an essential part of the conspiracy under indictment No. C 61-824, pursuant to which 68 defendants were convicted; and unless this court shall issue an appropriate injunction restraining the defendants from carrying out the said conspiracy, by any of the means and methods described in the amended petition herein, or otherwise, the defendants will resume all of the illegal acts described in this amended petition for the purpose of accomplishing all of the original objects of the said conspiracy.

(30) Since August 20, 1928, and up to the time of filing the amended petition herein, the Official Orthodox Poultry Slaughterers of America, Inc., its officers, representatives, and members have conspired and cooperated, and are conspiring and cooperating, with [illegible]ternational Brotherhood of Teamsters, Chauffeurs, [illegible]en and Helpers of America, its officers, representatives and members to commit all of the acts alleged in paragraph 31. In pursuance thereof the members of the Official Orthodox Poultry Slaughterers of America, Inc., have refused to slaughter live poultry for marketmen who did not employ the number of workmen required by the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of [fol. 20] America. Said practice on the part of the Official Orthodox Poultry Slaughterers of America, Inc., its officers, representatives, and members constituted an essential part of the conspiracy charged in indictment No. C 61-824.

(31) From January, 1929, up to and including January 1, 1930, the precise dates being to the petitioner unknown, many of the conspirators herein named as defendants, organized and operated under a combination in the Borough of Manhattan for the purpose of allocating the retail poultry dealers and butchers among themselves and fixing prices at which poultry should be sold to said retail dealers and butchers, in a manner similar to that alleged in paragraphs 17 and 18. It was an essential part of the plan of said combination to place men, known to the trade as "watchers", at many of the markets for the sole purpose of recording the volume of sales of each marketman and the names of the customers to whom said marketman sold. It has been a further part of said plan that marketmen who sold poultry in excess of the amount allocated to them were compelled to pay a penalty to said combination. Said penalty was computed on the basis of the volume of poultry sold in excess of the amount allocated to the particular marketman. Your petitioner is informed and believes that said combination was organized and operated for the sole purpose of restraining trade in live and freshly slaughtered poultry, and that it constitutes a continuation of the original conspiracy.

(32) Unless this Court shall issue an appropriate injunction restraining the defendants from carrying out, by any of the means and methods described herein or otherwise, said combination and conspiracy, illegal agreements and practices of these defendants will be resumed and will constitute an irreparable public injury, in that there will not be a free flow of live poultry through and into the States of New York and New Jersey, prices of poultry will be increased artificially, and butchers, retail poultry dealers, marketmen, receivers and shippers will not be able to purchase and sell live poultry in a free, open and competitive market.

[fol. 21]

VI

Prayer

Wherefore petitioner prays:

(33) That writs of subpœna issue directed to each and every of the defendants impleaded by name, commanding

them, and each of them to appear and answer for themselves and for those whom they represent, under oath, the allegations contained in this amended petition, and to abide by and perform such orders and decrees as the Court may make in the premises.

(34) And, further, that the Court order, adjudge and decree that the defendants, and each of them, and each and all of the respective officers, directors, members, agents, servants, employees and all persons acting or claiming to act on behalf of the defendants, or any of them, and persons whom any of the defendants represent, be perpetually enjoined and restrained from continuing to carry out, directly or indirectly, expressly or impliedly, the combination and conspiracy described in this amended petition, and from entering into, or performing, directly or indirectly, expressly or impliedly, any combination similar to that herein alleged to be illegal; that the defendants, and each of them, and each and all of the respective officers, directors, members, agents, servants, employees and all persons acting or claiming to act on behalf of the defendants, or any of them, and persons whom any of the defendants represent, be perpetually enjoined from doing any of the acts alleged in Section 22, (a) to (s) inclusive, or any acts in furtherance of a conspiracy to restrain trade and commerce in live poultry, or any acts tending to a monopoly or restraint upon such trade and commerce.

[fol. 22] (35) That the petitioner, notwithstanding this prayer, have such other further and general relief as the nature of the case may require and the Court may deem proper.

That the petitioner have its costs.

United States of America, Charles H. Tuttle, United States Attorney for the Southern District of New York. William D. Mitchell, Attorney General. John Lord O'Brian, The Assistant to the Attorney General. Walter L. Rice, Special Assistant to the Attorney General.

Duly sworn to by Walter L. Rice. Jurat omitted in printing.

[fol. 23] IN UNITED STATES DISTRICT COURT

In Equity. No. 52-30

[Title omitted]

ANSWER TO AMENDED PETITION

The defendants, Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, Carl Firestone, Charles Gershowitz, Morris Markman (alias "Nigger"), Abe Newman, Official Orthodox Poultry Slaughterers of America, Inc., Joseph Rosenman (Secretary of the Official Orthodox Poultry Slaughterers of America, Inc.), Harry Schomer, Charles Herbert, Harry Herbert, David Kaufman (alias "David Silver"), Max Keslin, Samuel Silverman, Joseph Weiner and Aaron Weissler, by their attorney, Samuel H. Kaufman for their answer to the Amended Petition herein, respectfully show this Court:

First. Deny each and every allegation contained in the Paragraph designated "(1)" thereof, except insofar as it is therein alleged that Live Poultry is shipped from certain states other than the State of New York into the State of New York.

Second. Deny each and every allegation contained in the Paragraph designated "(2)" thereof, except insofar as it is therein alleged that Live Poultry is shipped by persons, firms and/or corporations known to the trade as shippers, from states other than New York into the State of New York to persons, firms and/or corporations known to the [fol. 24] trade as receivers, said receivers being purchasers of said poultry from said shippers; and that said receivers, who receive said poultry in the State of New York, sell the same to persons, firms and/or corporations in the State of New York, known to the trade as marketmen, who have their respective places of business in the State of New York, and who are dealers in freshly slaughtered poultry.

Third. Deny each and every allegation contained in the Paragraph designated "(3)" thereof, except insofar as it is therein alleged that marketmen, having their places of business in the State of New York, after slaughtering said

poultry in their places of business, sell the same direct to consumers and, in some instances, to persons, firms and/or corporations, known to the trade as poultry dealers and butchers, who are engaged in the business of selling freshly slaughtered poultry, and have their places of business in the State of New York.

Fourth. Deny that they have any knowledge or information thereof, sufficient to form a belief as to each and every of the allegations contained in the Paragraphs designated "(4)", "(7)", "(8)", "(9)" and "(10)" thereof.

Fifth. Deny each and every allegation contained in the Paragraphs designated "(5)", "(6)", "(16)", "(17)", "(18)", "(19)", "(20)", "(21)", "(23)", "(26)", "(27)", "(30)" and "(31)" thereof.

Sixth. Deny each and every allegation contained in the Paragraph designated "(11)" thereof, except insofar as it is therein alleged that Local 167 of the International Broth-
[fol. 25] erhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, is a voluntary association, organized and existing under and by virtue of the laws of the State of New York, having an office in the Borough of Manhattan, in the City of New York.

Seventh. Deny each and every allegation contained in the Paragraph designated "(12)" thereof, except insofar as it is therein alleged that David Kaufman was sometime Secretary-Treasurer and Business Representative, and that Arthur Herbert and Harry Schomer were sometime Delegates of the said Chauffeurs' Union.

Eighth. Admit the allegations contained in the Paragraph designated "(13)" thereof, except insofar as it is therein alleged "a great majority of the said shochtim are members of the Official Orthodox Poultry Slaughterers of America, Inc." and this, the defendants above named deny.

Ninth. Deny each and every allegation contained in the Paragraph designated "(14)" thereof, except insofar as it is therein alleged that Kalman Shapiro was sometime President of the Official Orthodox Poultry Slaughterers of America, Inc., and that Charles Herbert and Joseph Weiner were sometime Delegates of said Official Orthodox Poultry Slaughterers of America, Inc.

Tenth. Deny each and every allegation contained in the Paragraph designated "(22)" thereof, including all the sub-divisions of Paragraph "(22)" designated "(a)" to "(t)" inclusive, thereof.

Eleventh. Deny each and every allegation contained in the Paragraph designated "(24)" thereof, except insofar as it is therein alleged that on or about August 20th, 1928, the Petitioner herein filed an Information against Sixty-[fols. 26 & 27] Eight defendants, many of such defendants defendants herein.

Twelfth. Insofar as Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America and the Official Orthodox Poultry Slaughterers of America, Inc., are referred to in the Paragraph designated "(25)" thereof, they deny each and every allegation contained in said Paragraph "(25)" thereof, except insofar as it is therein alleged that said Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America and said Official Orthodox Poultry Slaughterers of America, Inc., are still in existence.

Thirteenth. Deny that they have any knowledge or information thereof sufficient to form a belief as to the allegations contained in the Paragraph designated "(25)" thereof, respecting the Greater New York Live Poultry Chamber of Commerce.

Fourteenth. Deny each and every allegation contained in the Paragraph designated "(27)" thereof, including all the sub-divisions of Paragraph "(27)" designated "(a)", "(b)", "(d)", "(e)", "(f)", "(i)", "(l)", "(m)" and "(n)", thereof.

Fifteenth. Deny that they have any knowledge or information thereof sufficient to form a belief as to each and every of the allegations contained in the Paragraph designated "(28)" thereof, except insofar as it is therein alleged that they "maintained and continued the existence and operation of the Greater New York Live Poultry Chamber of Commerce" for any purpose whatsoever and this the defendants above named deny.

Sixteenth. Deny each and every allegation contained in the Paragraph designated "(29)" thereof, including all

[fols. 28–38] the sub-divisions of Paragraph "(29)" designated "(a)", "(b)" and "(c)", thereof.

Wherefore the defendants above named pray that the Amended Petition herein be dismissed.

Samuel H. Kaufman, Attorney for Defendants, Office and P. O. Address: 60 Wall Street, Borough of Manhattan, City of New York.

To United States Attorney.

(Verification by all of the above named defendants.)

[fol. 39] In United States District Court

Equity. No. 52/30

[Title omitted]

On motions by the United States, petitioner herein, to strike out as sham certain denials in answers filed by the defendants to a petition in equity brought under the so-called Sherman Act against two categories of persons: (a) sixty-eight defendants who have already been found guilty in a criminal prosecution in this court of the same conspiracy as is set forth in the petition, and (b) thirty-four defendants who either were not parties to the said criminal proceedings or, if parties, were not convicted therein.

In support of the motions:

George Z. Medalie, Esq., U. S. Attorney, Attorney for the United States, by John Lord O'Brian, the Assistant to the Attorney General, and Walter L. Rice, Esq., Special Assistant to the Attorney General, of counsel.

In opposition thereto:

Messrs. Goldstein & Goldstein, attorneys for Greater New York Live Poultry Chamber of Commerce, and seventy other defendants, by Joseph F. Kroppy, Esq., and Jonah J. Goldstein, Esq. of counsel.

[fol. 40] Messrs. Breed, Abbott & Morgan, attorneys for defendant, Ole Salthe, by B. A. Kozicke, Esq. of counsel.

Milton C. Weisman, Esq., attorney and of counsel for Meyer Weiss, a defendant.

Sol. H. Eisler, attorney and of counsel for Arthur Herbert, a defendant.

Samuel H. Kauffman, attorney and of counsel for Local 167 of International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, and 14 other defendants.

OPINION

WOOLSEY, J.:

I grant the motions in so far as they are aimed at answers filed by defendants who were convicted in the criminal prosecution heretofore had in this Court.

I deny the motions in so far as they are aimed at answers filed by defendants who were not parties to the said criminal prosecution, or if parties thereto, were not convicted therein.

I. There has not been any order entered either on Judge Bondy's opinion of August 9, 1930, U. S. A. v. Greater New York Live Poultry Chamber of Commerce et al., 44 F. (2d) 393, 394, nor on my own hitherto unreported opinion herein filed May 5, 1931.

The questions here involved, therefore, are still juridically at large, and with Judge Bondy's consent and approval I am going to deal with them here de novo in my own way as if there had not been any expression of opinion heretofore given either by him or by me thereon.

II. This suit is somewhat unusual in that it is an equity [fol. 41] suit intended to be based on a judgment of conviction in the latter part of 1929 on a criminal prosecution in this Court for a conspiracy in restraint of trade in interstate commerce. This conviction was affirmed. Greater N. Y. Live Poultry Chamber of Commerce v. U. S. A., 47 F. (2d) 156.

One would have supposed that, in a complicated case like this involving so many parties defendant, the United States, in commencing this suit which was brought in April 1930, after the conviction of sixty-eight of the defendants herein named would have annexed the judgment roll in the criminal case to the petition as a schedule thereof, and would have alleged, naming them, that 68 of the defendants here

were found guilty beyond a reasonable doubt in the criminal case of the conspiracy here complained of, and thus would have pleaded the conspiracy as a judicially established fact and relied on it as such for the relief here sought.

For some reason, which even after hearing the arguments, still remains inscrutable to me, the United States has set forth a conspiracy in its petition in the same words as it is printed in the indictment but as if the situation involved what I may appropriately call raw facts about a conspiracy, instead of an adjudicated conspiracy, established by a criminal conviction as against sixty-eight of these defendants.

It is owing to this failure of the Government to avail itself in its pleadings of the advantage which it had [fol. 42] achieved by the conviction of sixty-eight of these defendants after a long and arduous trial before Judge Knox, that its repeated interlocutory motions addressed to the defendants' answers have become necessary in order to clarify the situation as much as may be before trial. I find that the Government is objecting to procedural tactics on the part of the defendants previously convicted, which are the natural, if not the necessary, results of the Government's procedural strategy.

Conspirators differ one from the other in their attitudes and their partnership activities, and it is natural for any conspirator who finds an opportunity to do so, to endeavor to clear himself of some of the more odious of the acts of his associates. So a defendant who may have been convicted of a participation in a conspiracy in which all the acts alleged in the first twenty-three paragraphs of the petition occurred and all the purposes therein alleged were involved, may have himself intended to commit and may have committed only one of those acts and consequently would naturally be averse from admitting the other acts or any implication involved in them. By way of example—a defendant, who might have followed and spied upon poultry dealers, butchers and marketmen, might have been willing only vicariously through his associates to have cut tires, placed bombs in shops or set fire to stores or vehicles.

III. But an advantage lost by a mistake in strategy is sometimes retrieved by successful tactics after contact has been established with the opposing forces. So here, after

[fol. 43] the issues have been joined, the Government is able—because the criminal prosecution was in this Court—to fall back on the doctrine of judicial notice to support its motions and save its situation. The ineptness of the Government's procedural strategy, therefore, does not preclude me from giving it the relief which it seeks, so far as the sixty-eight defendants who were convicted in the criminal proceeding are concerned. For the whole judgment roll in the criminal case is on file in this Court as part of its records and, consequently, though not pleaded, is subject to my judicial notice. United States v. California Canneries, 279 U. S. 553, 555; Aspen Mining & Smelting Co. v. Billings, 150 U. S. 31, 38; Butler v. Eaton, 141 U. S. 240, 243, 244; French v. Senate of State of California, 146 California 604, 607, 80 Pac. Rep. 1031, 1033. And cf. Martin v. Kennecott Copper Corporation, 252 Fed. 207 (W. D. of Washington); Hubbard v. Loew, Collector, 226 Fed. 135, 139.

Examination of this judgment roll shows that any denials by the defendants in this suit who were convicted in the criminal action of the first twenty-three paragraphs of the petition or of any one of those paragraphs, or of any of the allegations therein contained, are sham denials made for obstructive purposes only, and therefore should be stricken out.

IV. On the other hand, when I turn to the defendants herein named against whom the estoppel of the criminal judgment does not obtain for the reason that they were [fol. 44] not parties to the criminal action or were not convicted therein, the situation is wholly different.

In the case of such defendants both parties are necessarily at large and there is not, as appears to be argued by the Government, even a partial estoppel against any of them, if such a thing can be conceived. Each of such defendants is entitled to his day in court on all of the issues which he has seen fit to raise. Consequently, of course, he has a perfect right to challenge the existence of the conspiracy alleged in the petition and is not limited as the Government would like to limit him, to an issue as to whether he participated in the conspiracy already judicially established inter alias.

So long as a defendant follows the required form in making a denial and the denial cannot be stricken out on

the ground that it is sham, a court is not at liberty, even in order to save time at the trial by simplifying or clarifying the situation, to change the pattern of the issues which a defendant has determined to raise. The Nesco-United States v. St. Paul Fire & Marine Ins. Co., 47 F. (2d) 643, 647.

V. Orders hereon may be settled on two days' notice and, as the rule requires, should be submitted, in the first instance to the Clerk of this Court.

October 26, 1931.

Woolsey, United States District Judge.

[fol. 45] In United States District Court

Equity. No. 52-30

[Title omitted]

Order Striking Portions of Answer

It appearing from the records on file in the office of the Clerk of this Court that indictment No. C 61-824 was returned and filed with the Clerk on January 17, 1929, charging that defendants herein, that is to say:

Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America,
Carl Firestone,
Charles Gershowitz,
Abe Newman,
Official Orthodox Poultry Slaughterers of America,
Harry Schomer,
Charles Herbert,
David Kaufman (alias "David Silver"),
Max Keslin,
Aaron Weissler,
Harry Herbert

together with 79 other defendants engaged in a conspiracy to restrain interstate trade and commerce in the live poultry industry in the Southern District of New York and vicinity in violation of the Act of July 2, 1890, (26 Stat. 209), [fol. 46] commonly known as the Sherman Antitrust Act; and that a verdict of guilty was rendered against all of

the above named defendants on November 21, 1929, after trial before the Honorable John C. Knox and a jury; and that the above named defendants were sentenced by this Court December 16-18, 1929, to serve jail terms in the Federal Detention Headquarters; to pay fines in varying amounts, and to be placed on probation for a period of five years; and

That a Petition was filed against the above named defendants and others on February 7, 1930, and an Amended Petition was filed against said defendants and others on April 16, 1930; and that said Amended Petition in the first 23 paragraphs thereof describes the identical conspiracy described in the first 23 paragraphs of indictment No. C 61-824, of which said defendants have been adjudicated guilty by the judgment of this Court; and

That said defendants filed an Answer on or about April 26, 1930, denying many of the allegations contained in the first 23 paragraphs of said Amended Petition.

Now, therefore, this cause having duly come on for argument before the Honorable John M. Woolsey, on motion of the United States Attorney for the Southern District of New York, and John Lord O'Brian, The Assistant to the Attorney General, and Walter L. Rice, Special Assistant to the Attorney General, it is

Ordered that paragraphs "First," "Second," "Third," "Fourth," "Sixth," "Seventh," "Eighth," "Ninth," "Tenth," and so much of paragraph "Fifth" of defendants' Answer as denies the allegations contained in paragraphs (5), (6), (16), (17), (18), (19), (20), (21), and (23) of said Amended Petition, be stricken from the said Answer and from the records in this case.

Dated New York, October 30, 1931.

Woolsey, United States District Judge.

[fol. 47] IN UNITED STATES DISTRICT COURT

In Equity. 52-30

[Title omitted]

NOTICE OF MOTION TO STRIKE

SIR: Please take notice that upon the petition herein and the answer of defendants,

Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America,
Carl Firestone,
Charles Gershowitz,
Morris Markman (alias "Nigger"),
Abe Newman,
Official Orthodox Poultry Slaughterers of America,
Harry Schomer,
Charles Herbert,
David Kaufman (alias "David Silver"),
Max Keslin,
Aaron Weissler,
Joseph Rosenman (Secretary of the Official Orthodox Poultry Slaughterers of America, Inc.),
Harry Herbert,
Samuel Silverman, and
Joseph Weiner,

and upon the indictment and judgment in the criminal case C 61-824, entitled United States of America v. Greater New York Live Poultry Chamber of Commerce, et al., copies of which are attached to this notice of motion,

The petitioner herein will move this Court on the 9th day of May, 1930, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard at the United [fols. 48-73] States District Court, Southern District of New York, Room 235, in the Old Post Office Building, Broadway and Park Row, in the Borough of Manhattan, City of New York, State of New York, for an order striking from the said answer all of the matters contained in paragraphs "First" to "Tenth", inclusive, on the ground that all of the material facts therein referred to have been finally adjudicated against said defendants by the said judgment of this Court in the aforesaid criminal prosecution and that said paragraphs of said answer are therefore sham, redundant and impertinant; and for such other and further relief as in the premises may seem just and proper.

Charles H. Tuttle, W. L. R., United States Attorney for the Southern District of New York.

To Samuel H. Kaufman, Attorney for Defendants.

Dated New York, April 30, 1930.

(Copy of indictment returned on Jan. 17, 1929, was attached hereto as part of moving papers which is omitted by stipulation because same allegations are contained in Amended Petition.)

[fol. 74] IN UNITED STATES DISTRICT COURT

Equity. 52-30

[Title omitted]

RECORD OF CONVICTIONS

Indictment No. C 61-824 was filed with the Clerk of the District Court for the Southern District of New York January 17, 1929. On January 28, 1929 defendants Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Laborers of America, Carl Firestone, Charles Gershowitz, Abe Newman, Official Orthodox Poultry Slaughterers of America, Harry Schomer, Charles Herbert, David Kaufman (alias "David Silver"), Max Keslin, Aaron Weissler, and Harry Herbert plead not guilty and bail was fixed for each of the individual defendants. Trial commenced on October 7, 1929, and a verdict of guilty was rendered against all of said defendants November 21, 1929. Defendants were sentenced December 16-18, 1929 as follows:

Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Laborers of America: Sentence suspended and defendant placed on probation for five years.

[fol. 75] Carl Firestone: $500 and 00/100 fine suspended; sentenced to four weeks in the Federal Detention Headquarters; placed on probation five years.

Charles Gershowitz: Suspended sentence; placed on probation five years.

Abe Newman: Suspended sentence; placed on probation five years.

Official Orthodox Poultry Slaughterers of America: Sentence suspended; placed on probation for five years.

Harry Schomer: Fine suspended; sentenced to four weeks in the Federal Detention Headquarters; placed on probation for five years.

Charles Herbert: $500 and 00/100 fine suspended; sentenced to two weeks in the Federal Detention Headquarters; placed on probation for five years.

David Kaufman (alias "David Silver"): $500 and 00/100 fine suspended; sentenced to eight weeks in the Federal Detention Headquarters; directed to pay $50 and 00/100 to Morris Teitler; placed on probation for five years.

Max Keslin: $500 and 00/100 fine suspended; sentenced to ten days in Federal Detention Headquarters; placed on probation for five years.

Aaron Weissler: $500 and 00/100 fine suspended; sentenced to four weeks in Federal Detention Headquarters; placed on probation for five years.

Harry Herbert: Suspended sentence; placed on probation for five years.

The Clerk of the District Court for the Southern District of New York certifies that the above is a correct tran-
[fol. 76] script of his records showing the indictment, pleas, trial, verdict and sentence of the defendants herein named.

Alex Gilchrist, Jr., Clerk of Court, Southern District of New York.

Dated April 8, 1930.

[fol. 77] [Endorsed:] Motion to Strike Answer. To Samuel H. Kaufman, Esq., 60 Wall St. Copy received this 1st day of May, 1930. S. H. Kaufman, Atty. for Def.

[fol. 78] In United States District Court, Southern District of New York

Equity. No. 52-30

[Title omitted]

Findings of Fact and Conclusions of Law

Findings of Facts

Upon the evidence presented in this cause, the Court finds that:

1. The Greater New York Live Poultry Chamber of Commerce, hereinafter referred to as the Chamber of Commerce, is an association of poultry marketmen doing business in the Metropolitan Area, comprising the City of New York and those portions of the States of New York and New Jersey situated within thirty miles of the boundaries of the City of New York.

2. Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, hereinafter referred to as Teamsters' Union, is a labor union comprising workmen engaged in handling, crating, and loading live poultry at West Washington Market and the New York Central Railroad Terminal, and trucking such poultry from the railroad terminals and West Washington Market to the various poultry markets of the Metropolitan Area. Defendants Arthur Herbert and Harry Schomer are delegates, and David Kaufman is business representative of the Teamsters' Union.

3. The Official Orthodox Poultry Slaughterers of America, Inc., hereinafter referred to as Shochtim Union, is a corporation comprising slaughterers of poultry who are [fol. 79] qualified to slaughter poultry in accordance with Jewish Dietary laws. A person competent under said Jewish Dietary laws to slaughter poultry is known to the trade as a shochet (plural, shochtim). The poultry is slaughtered by the said shochtim in the employ of the marketmen. Defendants Charles Herbert and Joseph Weiner are delegates of the Shochtim Union.

4. Defendants Barney Azwolinsky; Morris Azwolinsky; Al Berman; Herman Berman; Charles Bistretsky; Abraham Bloom; Isidore Bloom; Morris Bloom; Isidore Blumenfeld; Morris Brown (of the Irving Poultry Co.); Morris Chast; Morris Damsky; Harry Dworkin; Ida Frank; Isidore Frank; Hyman Frankfater; Jacob Frankfater; Abraham Franzel; Samuel Friedman; Morris Frisman; Morris Gerber; Max Glantz; Max Gold; Samuel Gold; Abraham Goldberg (of the Pitt St. Live Poultry Market); Samuel Goldstein; Isidore Gordon (of the F. G. T. Live Poultry Market); Morris Gordon; Isaac Greenstein (of the Tremont Live Poultry Market); Kalman Gross; Hyman Haber; Isidore Haber; Abraham Harrison; Samuel Harrison; Morris Hellman; Harry Herbert, Dave Hirshon; L. Hornstein (of

Hornstein & Spatz); Samuel Isaacson; Morris Joselson; Samuel Kadin; Isaac Kaplan (of the Prospect Poultry Co.); Leo Kassoff; Morris Klieger; Jacob Koslow; Alter Kupersmith (of K. Gross, Inc.); Simon Lapof; Goodman Levy; Isaac Lipschitz; Samuel Mamber; Joseph Manne; Samuel Manne; Joe Mines; Jacob Mintz; Charles Mirotznik; Hyman Nierenberg; Abraham Pepper; Hyman Raby; Jacob Reisner; Max Rosen; Harry Rubin; Samuel Sahn; Ole Salthe (of the Dexter Poultry Co., Inc.); Louis Schiller; Joseph Scull; William Simon; Paul Sosnik; Sidney Sosnik; Louis Spatz; Aaron Steinberg (of the Monroe Poultry Co.); Jacob Turkowitz (of the F. G. T. Live Poultry Market); Louis Weidberg; Max Wolas; Abraham Wolfe; Irving Yarmouth (associated in business with Kalman Gross), were at some time prior to the filing of the petition herein members of the Chamber of Commerce, and engaged in business as marketmen. Each of said defendants participated in the conspiracy alleged in the Amended Petition.

[fol. 80] 5. At least 98% of the poultry sold in New York is shipped from outside the State by shippers to commissionmen, hereinafter called receivers. From 80% to 90% of the poultry is shipped by freight and the remainder is shipped by express. Such poultry arrives at five railroad terminals. About 50% arrives at the New York Central Terminal at 60th Street, Manhattan; the remainder comes in at the terminals of Erie, Lackawanna, Central Railroad of New Jersey, and Pennsylvania, all located in New Jersey. Immediately after the poultry is inspected at the terminal, it is unloaded and put into coops, and when not sold and delivered at the terminal is carted to West Washington Market in New York City. From 60% to 80% of the poultry is sold directly from the freight cars at the terminals. About 50% is ordered subject to inspection either while the cars are in transit or before the poultry is taken out of the cars. The rest of the poultry is trucked from the railroad terminals to West Washington Market, at the expense of the shipper and is either transferred from the trucking company's truck to that of the buyer or is unloaded at the receiver's stand and is sold from there, according to convenience. The poultry, a perishable commodity, is moved as rapidly as possible, most of it being sold on the day of unloading. The receiver sells the poultry and remits never less but some times more than the price which he obtains

from the marketmen, which price is called the "market quotation". He usually remits the market price for the day, after deducting charges for freight, coops, food, unloading, cartage to West Washington Market, and 3, 4, or 5% commission. Because of competitive conditions, the commission men have been making their return on the basis not of what they receive, but of the highest market price for the day. By the custom of the trade and because of competitive requirements, the return is made as of the day of unloading. The receiver is obligated at all times to carry out the instructions of the shipper as to the time of unloading and as to the price. The shipper is entitled to [fol. 81] speculate on the price until he gives the receiver orders to sell. As a commissionman he acts as a bank and collection agency for the shipper and keeps him fully advised of market conditions.

The poultry is sold in coops by the commissionmen to the marketmen. The defendant marketmen handled at least 55% to 60% of the poultry sold in West Washington Market. They cause it to be loaded on trucks either at the railroad terminals or at West Washington Market, and take it to their places of business where they cause the poultry to be slaughtered, sold, and delivered to butchers and poultry dealers.

6. Defendants Max Keslin, Morris Markman (alias "Nigger"), Julius Rosenstein, Murray Rosenstein, Sidney Rosenstein, Aaron Weissler, Meyer Weis, Charles Gershowitz, Abe Newman, Carl Firestone, Jacob (Joe) Mast, Michael Lax, Sam Lipkin, John J. Conlin and Hyman Fishman were employed by the Chamber of Commerce and by defendant marketmen and union delegates to enforce the agreement to allocate customers in the several districts.

7. In May or June, 1927, about one week after Benjamin Simon was appointed Supervisor of the Chamber of Commerce, he called a meeting of the Board of Directors of the Chamber of Commerce, comprising representatives from each of the following districts of the Metropolitan Area: Bronx, Harlem, East Side, Williamsburg, Brownsville, Borough Park, and Coney Island. He told the directors that he wanted $5,000 per week, and suggested that it be collected in the form of a levy of 1¢ per pound on all poultry sold by marketmen in the respective districts. Exhibit 9 was prepared by defendant Albert Winkel, at that time

president of the Chamber of Commerce, and it was agreed by the directors and Benjamin Simon that collections were to be made in accordance with the following percentage from marketmen of

Bronx	21½%
Harlem	10 %
East Side	16½%
Brooklyn	16 %
[fol. 82] Brownsville	17½%
Borough Park	18½%

On the basis of this agreement the various districts were to contribute the following amounts, as their respective shares of $5,000 per week to be paid to Benjamin Simon:

Bronx	$1,075
Harlem	500
East Side	825
Brooklyn	800
Brownsville	875
Borough Park	925

8. It was agreed and understood by defendants that the money collected was to be used: (a) to pay small marketmen and poultry dealers weekly sums in return for their promise to refrain from engaging in a wholesale business, that is, selling poultry to butchers and dealers; (b) to maintain and enforce a system of allocating customers (retail dealers and butchers) among the various marketmen, by hiring men to spy upon, report, threaten, and obstruct marketmen, retail dealers, and butchers who did not abide by the allocation agreement; (c) to prevent retail dealers and butchers from purchasing at sources other than the markets to whom they were allocated, by hiring men to spy upon and obstruct such dealers and butchers and by paying money to marketmen in return for their promises to refuse to sell to dealers and butchers; (d) to prevent marketmen from selling to retail dealers and butchers not allocated to them; (e) to prevent recalcitrant marketmen, poultry dealers, or butchers from obtaining poultry in West Washington Market, at the railroad terminals in New York and New Jersey, or at any sources whatever, either within or without the State of New York; and (f) to bribe public officials charged with the enforcement of antitrust laws.

9. The following defendants, who for the most part were directors of the Chamber of Commerce, were appointed by Benjamin Simon as collectors for the respective districts, and functioned in that capacity:

Bronx	Louis Spatz, Max Rosen.
Harlem	Louis Cohen, William Simon.
East Side	Louis Weidberg, Charles Mirotznik.
Williamsburg	Samuel Sahn, Sam Mamber.
Coney Island and Borough Park	Sam Gold.
Brownsville	David Hirshon, Morris Gordon.

[fol. 83] 10. The collectors called meetings of marketmen in their respective districts. At these meetings marketmen were told that they would have to contribute 1¢ per pound on all the poultry they sold. The marketmen allocated the poultry dealers and butchers among themselves and agreed not to sell to customers not allocated to them. A committee was appointed to arbitrate disputes arising whenever a particular customer was claimed by several marketmen. For the purpose of settling disputes as to the customers claimed by more than one marketman in Brownsville, it was agreed that the marketmen who sold the most poultry to a particular customer in the last week of June, 1927, should be entitled to that customer. Objecting marketmen were ordered from the meeting. It was agreed that the money collected was to be used to hire men to run the organization, and to bribe public officials.

11. Marketmen were told to advance their prices, and were occasionally told by leaders of the respective districts what price to charge. The prices were advanced materially from June, 1927 until August, 1928. Whereas marketmen had charged 3¢ and 4¢ per pound above the prices which they paid to receivers before June, 1927, they thereafter concertedly charged 6¢, 8¢, 10¢ and as much as 15¢ and 18¢ above the prices which they paid to receivers.

12. The original weekly collections in 1927 aggregated thousands of dollars. In Brownsville alone they amounted to about $8,000.00. On the East Side the collections aggregated $2,100 to $3,200 per week, of which $1,030 per week was paid to Benjamin Simon. The collections in the Bronx aggregated $2,000 to $2,500 per week, of which $900 or

$1,000 per week was paid to Benjamin Simon. The collectors in other districts made collections from marketmen, and paid a portion of the amount collected to Benjamin Simon.

13. The collections aggregated approximately $1,000,000 per year, and continued for more than one year, commencing in June, 1927 and lasting until at least August 20, 1928, when a criminal information was filed against 64 individ- [fol. 84] uals; 4 associations, and one corporation, 52 of whom are defendants in the present case. The sums collected in the several districts were several times as large as the amount paid to Benjamin Simon. Large sums of the fund collected were used to buy the competition of small marketmen and poultry dealers, who agreed not to sell to retail poultry dealers and butchers. Such payments to small marketmen ranged from $50 to $250 per week. Substantially all of defendant marketmen were either paying money to the collectors or receiving payments from them. The payments to marketmen aggregated many thousands of dollars per week.

14. Marketmen were told by leaders of the several districts that if they did not pay the 1¢ per pound, they would be prevented from obtaining poultry from the railroad terminals and West Washington Market.

15. The plan to allocate customers, collect 1¢ per pound, raise prices, and prevent recalcitrant marketmen, poultry dealers, and butchers from obtaining poultry from West Washington Market, the railroad terminals and other points outside the City of New York was carried out by defendants.

16. A complete system of supervision which included spying upon marketmen, dealers, and butchers to ascertain the source of their poultry, threats of violence, sabotage, and malicious destruction of property was instituted.

17. Marketmen who refused to abide by the system of allocation or to pay the 1¢ per pound, were obstructed in their attempt to purchase poultry at the railroad terminals in New Jersey, at the New York Central Terminal, and at West Washington Market. Members of the Teamsters' Union and of the Shochtim Union, in compliance with instructions from defendant marketmen and

delegates, refused to load, unload, handle or slaughter poultry for recalcitrant marketmen, and by violence, threats of violence, and sabotage, prevented such marketmen from purchasing poultry both within or without the State of New York. To carry — including Bronx, Harlem, East Side, [fol. 85] Brooklyn, Brownsville, and Borough Park, contributed at least $75 per week to the officers of the Shochtim Union. The East Side paid from $105 to $355 per week to its officers, in return for which they supplied shochtim without cost on Thursdays and Fridays to some of the East Side marketmen, in addition to cooperating with the plans of the conspiracy.

19. Officers and delegates of the Teamsters' Union and the Shochtim Union caused the members of said unions to refuse to load, handle or slaughter poultry for recalcitrant marketmen, either in their markets, at West Washington Market, or at the railroad terminals.

20. Retailers who insisted on selling at wholesale in violation of the allocation plan, were required by the delegates of the Teamsters' Union and the Shochtim Union to hire more union men than their business warranted. On some occasions marketmen who refused to abide by the conspiracy were required to take union men who were instructed to do as much damage and as little work as possible.

21. When the success of the conspiracy was threatened by importations of poultry from Philadelphia and other distant cities, marketmen and drivers of interstate truck loads were threatened by defendant union delegates and marketmen with violence unless they discontinued. The president of the Chamber of Commerce accompanied a delegate of the Chauffeurs' Union to Philadelphia and ordered a poultry commissionman there not to ship poultry to New York marketmen without the Union's consent.

22. When retail dealers, driven by extortionate prices charged them, attempted to buy in New Jersey, they were followed and spied upon by defendants employed for that purpose, and in some instances forcibly brought back to the marketmen to whom they had been allocated. New Jersey marketmen who persisted in selling them were cut off from

their supplies of poultry in West Washington Market, New York.

23. In carrying out the plans of the conspiracy the following defendants were employed in the capacities herein designated:

(a) Max Keslin, a member of the Teamsters' Union, notified the various loaders and other members of the Teamsters' Union employed by the receivers in West Wash- [fol. 86] ington Market that various marketmen were on the blacklist, and ordered them not to load poultry for such marketmen.

(b) Morris Markman (alias "Nigger") prevented blacklisted marketmen from obtaining poultry at the New York Central Railroad Terminal located at 60th Street, Manhattan.

(c) Julius Rosenstein, Murray Rosenstein, Sidney Rosenstein, Aaron Weissler, Meyer Weiss, Charles Gershowitz, Abe Newman and Carl Firestone employed threats and violence to compel adherence to the allocation agreement, followed and spied upon poultry dealers, butchers, or marketmen who were buying or selling otherwise than in accordance with the allocation plan.

(d) Jacob (Joe) Mast accompanied collectors in the Bronx and Harlem, inspected the books of marketmen to ascertain the volume of their weekly sales for the purpose of reporting the same to the collectors, and instructed marketmen of the prices to charge for their poultry.

(e) Michael Lax and Sam Lipkin made collections of 1¢ a pound from marketmen in Brownsville.

(f) John J. Conlin, delegate of Local 560 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, a New Jersey Local affiliated with Local 167, made collections of 1¢ a pound from marketmen in New Jersey, and prevented New York marketmen from obtaining poultry in New Jersey.

(g) Hyman Fishman was employed by the Chamber of Commerce to prevent recalcitrant marketmen from obtaining poultry.

[fol. 87] 24. On August 20, 1928, an information, charging substantially the same offense as is charged in the original and amended petition herein, was filed against 69 defendants, 52 of whom are defendants in the present case. On January 17, 1929, an indictment was returned by the Grand Jury for the Southern District of New York charging 90 defendants, including 65 of the present defendants with substantially the identical conspiracy charged in the original and amended petition herein.

25. On December 16, 17 and 18, 1929, this Court, pursuant to a jury verdict of guilty against 66 defendants and pleas of guilty on the part of three defendants, sentenced 69 defendants, of whom the following 65 are defendants in the case at bar and have participated in the conspiracy alleged in the amended petition:

Morris Aswolinsky,
Herman Berman,
Charles Bistretsky,
Morris Chast,
Morris Damsky,
Carl Firestone,
Isidore Frank,
Jacob Frankfater,
Morris Gerber,
Charles Gershowitz,
Samuel Gold,
Morris Gordon,
Greater New York Live Poultry Chamber of Commerce,
Kalman Cross,
Hyman Haber,
Isidore Haber,
Samuel Harrison,
Morris Hellman,
Arthur Herbert,
Charles Herbert,
Harry Herbert,
Dave Hirshon,
Samuel Isaacson,
Morris Joselson,
Samuel Kadin,
Isaac Kaplan (of the Prospect Poultry Company),
Leo Kassoff,
David Kaufman,
(alias "David Silver")
Max Keslin,
Morris Klieger,
Jacob Koslow,
Simon Lapof,
Michael Lax,
Samuel Lipkin,
Isaac Lipschitz,
Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America,
Samuel Mamber,
Joseph Manne,
Samuel Manne,
Charles Mirotznik,
Abe Newman,
Nyman Nierenberg,
Official Orthodox Poultry Slaughterers of America, Inc.,
Abraham Pepper,
Hyman Raby,

[fol. 88]

Jacob Reisner,
Max Rosen,
Julius Rosenstein,
Murray Rosenstein,
Sidney Rosenstein,
Samuel Sahn,
Louis Schiller,
Harry Schomer,
Joseph Scull,
William Simon,
Paul Sosnik,
Sidney Sosnik,
Louis Spatz,
Aaron Steinberg (of the Monroe Poultry Company),
Louis Weidberg,
Aaron Weissler (alias "Arke"),
Max Wolas,
Abraham Wolfe, and
Irving Yarmouth.

26. The Chamber of Commerce, the Teamsters' Union and the Shochtim Union have all continued in existence up to the time of the filing of the amended petition, April 16, 1930, and thereafter.

27. The conspiracy described in the amended petition continued in existence up to the time of filing the amended petition April 16, 1930, and for at least eleven months thereafter.

28. In June, 1929, the defendant marketmen of the East Side organized the L. W. Credit Association for the purpose of restricting competitive sales, allocating poultry dealers and butchers among them, raising prices, and restraining free competition in the sale of live poultry. So-called "watchers" or "chargers" were placed by the L. W. Credit Association in the several markets of the East Side district. Said "watchers", in pursuance of the plan to allocate customers and advance prices recorded the weight of the poultry sold by the marketmen to each poultry dealer and butchers, and transmitted said reports to the L. W. [fol. 89] Credit Association. The several marketmen of the East Side were allotted a specific quota of sales per week. For every pound of poultry sold in excess of the quota each marketman was required to pay 4¢ a pound to the L. W. Credit Association; for each pound under his quota for a particular week, each marketman was entitled to receive 4¢ a pound from the L. W. Credit Association. For the purpose of coercing adherence to the L. W. Credit Association, delegates of the Teamsters' Union required one marketman to hire additional union employees, until he

had "straightened out" with the Association. An East Side poultry dealer was prevented by an officer of the L. W. Credit Association from purchasing poultry in Brooklyn. The L. W. Credit Association continued in existence until a few weeks before the commencement of the criminal trial under indictment No. C. 61-824, in October, 1929.

29. In February, March, April, and May, 1930, Aaron Steinberg was prevented by defendants from purchasing and obtaining delivery of poultry from marketmen in New York, from receivers in West Washington Market, from receivers at the New York Central Terminal, and New Jersey Terminals, from Philadelphia, from Elizabeth, N. J., and from Lincoln, Nebr. Delegates of the Teamsters' Union and of the Shochtim Union attempted to coerce Steinberg to employ more union men than his business warranted and prevented others from selling and delivering poultry to Steinberg in interstate commerce. As part of their plan to prevent Steinberg from obtaining poultry in interstate commerce, defendants threatened and assaulted Steinberg's employees, caused the destruction of his poultry truck, and prevented the National Box Company of Newark, N. J. from delivering empty coops for the transportation of poultry in interstate commerce to Steinberg's market. Defendant marketmen cooperated with the delegates of the Teamsters' Union and the Shochtim Union to prevent Steinberg from obtaining poultry. The activities of defendants with relation to Aaron Steinberg in February, March, April and May of 1930 constituted a continuance of the conspiracy described in the amended petition and a [fol. 90] threat of future violations of the Sherman Anti-trust Act on the part of defendants.

30. Barney Hecht was prevented by defendants from obtaining poultry from receivers in West Washington Market in July, 1930. He was prevented by defendants from obtaining poultry at the New York Central Terminal in March, 1929, and in Newark, N. J., in March, 1929.

31. In March, 1931, marketmen in Passaic, N. J. were prevented from obtaining poultry from receivers in Newark, N. J. because they had sold at prices approximately 4¢ above the price paid to receivers, whereas competing marketmen were charging 10¢ or 12¢ above the price

charged by the receivers; and were warned by defendant Max Keslin in March, 1931, that they would be unable to obtain poultry in West Washington Market if they sold to a designated person.

32. Alexander Pearlman and Abraham Pearlman, marketmen, were prevented by defendants from obtaining poultry at the New York Central Terminal and at West Washington Market in December, 1929.

33. Marketmen were required in 1931 by delegates of the Teamsters' Union and of the Shochtim Union to employ more workmen than their business warranted. Members of the Teamsters' Union and of the Shochtim Union forbade marketmen to sell wholesale.

34. Defendant Joseph Rosenman threatend Benjamin Rothschild with physical violence about a week after the conclusion of the criminal trial C 61-824, for having testified against him at said criminal trial.

35. From September 19, 1931 to some time in November, 1931, when publicity was given to the fact that an injunction suit against defendants would commence on November 16, 1931, butchers in Coney Island, Borough Park, Bensonhurst, Bronx, and Harlem were concertedly charged by marketmen in said districts prices in excess of the prices which had been charged prior to September 19, 1931. Prior to said date butchers paid marketmen 3, 4, and 5¢ above the prices which the marketmen paid to the receivers. After September 19, 1931, butchers were charged 8 to 12¢ above the prices paid by marketmen to receivers. During [fol. 91] said period of time marketmen in said districts refused to sell butchers who had been dealing with other marketmen. In at least one instance defendant marketmen agreed upon high prices to be charged on the succeeding day. During said period of time marketmen in said districts frequently told butchers that they could not sell them because of a combination or agreement among the marketmen. Marketmen with whom butchers had been regularly dealing, frequently told the butchers that if they bought elsewhere, the profits would revert back to the regular marketman.

36. Defendants sold only reluctantly to butchers who had not been dealing with them regularly, and admitted that

they would be given trouble by the labor unions and by other marketmen if they were discovered selling to such butchers. Members of the labor unions interfered with such sales to butchers. Marketmen in said districts were accused by butchers of overcharging, and in repeated instances gave rebates of 1, 2, and 3¢ a pound to partially offset the high prices charged.

37. In August, 1931, the Live Poultry Slaughter House Association, comprising most of the poultry marketmen of the Metropolitan Area, was formed to succeed the Live Poultry Protective Dealers Association, which comprised a great number of retail marketmen and a smaller number of wholesale marketmen. The Live Poultry Slaughter House Association realizes an income from the same source as the Chamber of Commerce, namely, the assignment of 10¢ on each empty coop returned by marketmen to Bernstein & Sons and the New Jersey Coop Company, which corporations supply coops for the trucking of poultry from the railroad terminals to the various markets in the Metropolitan Area. Some of defendant marketmen who are members of the Live Poultry Slaughter House Association have manifested a disposition to use the Associjation as an instrumentality for continuing the conspiracy described in the amended petition.

[fol. 92] 38. The Harlem and Bronx Live Poultry Board of Trade, organized in the fall of 1931, comprised most of the marketmen doing business in Harlem and Bronx. The members agreed not to sell on credit to poultry dealers and butchers who did not produce receipted bills showing full payment to marketmen with whom said poultry dealers and butchers had last dealt. By the custom of the trade poultry dealers and butchers pay their bills only once each week, paying on Monday morning for all poultry bought during the previous week. Poultry dealers and butchers, under the restrictions imposed by the Harlem and Bronx Live Poultry Board of Trade, were not to be permitted to change marketmen during the middle of the week unless they paid cash or produced a receipted bill showing full payment to the marketmen with whom they had last dealt. After the formation of the Harlem and Bronx Live Poultry Board of Trade, the marketmen of the Bronx charged prices in excess of those charged before the formation of

said association. One marketman was prevented from obtaining poultry in West Washington Market because he resigned from the Harlem and Bronx Live Poultry Board of Trade.

39. At the time of the filing of the original petition, February 7, 1930; at the time of filing of the amended petition, April 16, 1930; and up to the time of the trial of this case, there has been a continuous and dangerous probability of resumption of all of the acts, purposes, means, and methods described in the amended petition.

40. The presumption of continuance of the conspiracy and of the participation of the various defendants therein has not been rebutted.

41. Each of the allegations in the amended petition has been proved by the Government, except that it has not been proved that the defendants Jacob Damsky and Sam Silverman participated in the conspiracy therein alleged.

[fol. 93] CONCLUSIONS OF LAW

(1) This Court has jurisdiction over the cause herein and over each of the defendants.

(2) Poultry shipped into New York City remains in interstate commerce until sold and delivered by receivers to marketmen.

(3) All of the defendants herein, except Jacob Damsky and Sam Silverman, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act To protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209), commonly known as the Sherman Antitrust Act, entered into and engaged in a conspiracy to restrain and monopolize, attempted to monopolize, and did restrain and monopolize the interstate trade and commerce in live poultry in the Southern District of New York, in the Metropolitan Area, and among the several States from which poultry is shipped into New York City. In pursuance of said conspiracy, said defendants and others restrained and monopolized the intrastate trade and commerce in live and freshly slaughtered poultry, in the Metropolitan Area, by the means and methods described in the amended petition.

88 * * (Caption) * *

Know All Men By These Presents, That John Factor, of the County of Cook, State of Illinois, as principal, is held and firmly bounden unto H. C. W. Laubenheimer, United States Marshal for the Northern District of Illinois, Eastern Division, and unto the United States of America, in the full and just sum of Fifty Thousand Dollars ($50,000.00) to be paid unto the said H. C. W. Laubenheimer, United States Marshal for the Northern District of Illinois, Eastern Division, and/or the United States of America, to which payment well and truly I bind myself, my heirs, executors, administrators and successors, jointly and severally by these presents.

Sealed with our seals and dated this 11th day of February in the year of our Lord, One Thousand Nine Hundred and Thirty-two.

Whereas, lately, on the 11th day of February, 1932, at the February Term of the United States District Court for the Northern District of Illinois, Eastern Division, in a cause pending in said court between the United States of America ex rel, John Factor, vs. H. C. W. Laubenheimer, United
89 States Marshal for the Northern District of Illinois, Eastern Division, an order of the United States District Court for the Northern District of Illinois, Eastern Division, was entered on habeas corpus discharging John Factor of and from the custody of the said United States Marshal upon the said John Factor entering into recognizance in the principal sum of Fifty Thousand Dollars ($50,000.00) with good and sufficient surety to be approved by the court conditioned upon his personally appearing before the United States Circuit Court of Appeals for the Seventh Circuit on an appeal in said cause to answer, abide and obey all the judgments and all orders made by the United States Circuit Court of Appeals for the Seventh Circuit in said cause, and upon his personally appearing before the Supreme Court of the United States in event of certiorari in said cause to answer, abide and obey all the judgments and all orders made by the Supreme Court of the United States in said cause.

Now the Condition of Said Obligation is such, That if he, the said John Factor, shall appear in person before the United States Circuit Court of Appeals for the Seventh Circuit in an appeal of said cause to answer, and shall abide and obey all the judgments and all orders made by the United

States Circuit Court of Appeals for the Seventh Circuit in any appeal of said cause, and shall personally appear before the Supreme Court of the United States in the event of certiorari in said cause to answer, and shall abide and obey the judgment and all orders made by the Supreme Court of the United States, then this obligation is to be void, otherwise to remain in full force, virtue and effect. $50,000 Liberty Bonds deposited with the Clerk February 11, 1932 for the faithful performance of this bond and made a part hereof.

JOHN FACTOR (Seal)

90 Signed and acknowledged to and before me this 11th day of February, 1932.

CHARLES M. BATES
Clerk.

Approved by:
CARPENTER
United States District Judge.

11 Feb. 1932.

O. K.
L. MOODY
Atty for U. S.

91 And afterwards, to wit, on the 11th day of February 1932 being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable George A. Carpenter District Judge, appears the following entry, to wit: Entered 1932.

92 • • (Caption) • •

Thursday, February 11, 1932.

Present: Honorable George A. Carpenter, Judge of said Court.

This day comes the Relator by his attorney and presents herein his bond in the penal sum of Fifty Thousand ($50,000.00) Dollars which bond is approved and signed by the Court and ordered by the Court to be filed by the Clerk of this Court.

tions. 116 * * (Caption) * *

BILL OF EXCEPTIONS.

Be it remembered that heretofore, to-wit, on the 20th day of January, A. D. 1932, the above entitled cause came on to be heard at Chicago, Illinois by the District Court of the United States, for the Northern District of Illinois, Eastern Division, upon the issues joined therein, His Honor George A. Carpenter, Judge Presiding, without a jury.

Whereupon, it appearing to the Court that writs of habeas corpus and certiorari having duly issued out of said District Court of the United States for the Northern District of Illinois, Eastern Division, on January 12th, A. D. 1932, said writs having been ordered issued by the Honorable Charles E. Woodward, Judge Presiding; that H. C. W. Laubenheimer, United States Marshal for the Northern District of Illinois, Eastern Division having filed his return to the District Court of the United States for the Northern District of Illinois, Eastern Division, to the said writ of habeas
117 corpus; and that Edwin K. Walker, United States Commissioner in and for the Northern District of Illinois, Eastern Division, having made and filed his return to the writ of certiorari to the District Court of the United States for the Northern District of Illinois, Eastern Division; and it further appearing that traverses to each of said returns were duly filed, this cause came on to be heard upon said petitions, returns and traverses.

And thereupon counsel for the relator presented to the Court a printed abstract of the said return of United States Commissioner Edwin K. Walker consisting of a true abstract of the depositions and documents of the demanding government and of the testimony of witnesses produced by John Factor, and all orders, pleadings, motions and rulings made, entered and filed in the extradition proceeding before Edwin K. Walker as United States Commissioner aforesaid; and the parties hereto have by stipulation of counsel, which said stipulation is attached hereto and made a part hereof, agreed that the said printed abstract, which is attached to this Bill of Exceptions and made a part hereof, together with true copies of all exhibits contained in said return so made by said Edwin K. Walker, as United States Commissioner aforesaid, not included in said printed abstract be

also attached hereto and made a part hereof, and that said printed abstract and said true copies of such exhibits may be considered for all purposes on any appeal in this cause in lieu of the original return of said Edwin K. Walker, as United States Commissioner aforesaid, to said writ of certiorari and may be certified in any proceeding on appeal as a true copy of the return of said Commissioner.

118 Whereupon, representatives of the demanding government in their argument before said Court read extracts from a stenographer's notes of the oral remarks of Judge Louis FitzHenry made at the time Judge FitzHenry sustained a motion made upon behalf of the demanding government to strike a prior petition for a writ of habeas corpus from the files.

Whereupon, the Court took judicial notice that a former petition for discharge on a writ of habeas corpus was stricken from the files by Judge FitzHenry.

Whereupon, representatives of the demanding government urged the Court to adopt the oral remarks of Judge FitzHenry as aforesaid, and hold that the offense of receiving money knowing it to have been fraudulently obtained is a criminal offense under the laws of the State of Illinois.

Whereupon, on the 11th day of February, A. D. 1932, the Court delivered his opinion and ordered the same to be made a part of this Bill of Exceptions, which option is in words and figures as follows:

OPINION OF THE COURT.

A word about the history of the case. In December 1930, a complaint was lodged in London, England, against the defendant. I am speaking of the last complaint, the only one we are concerned with here, and extradition was necessary because Factor, who was charged with a crime in London, was in the United States.

In May 1931, a complaint was filed before Commissioner Walker in this district by the Government of Great Britain, the Demanding Government, asking for extradition.

119 Hearings before the Commissioner began, during which an application for a writ of habeas corpus was brought in this Court on the ground that the crime for which extradition was sought was not a crime in the State of Illinois, the state of asylum. A motion to strike that petition from the files prevailed in this Court. I take the motion to strike in the nature of a demurrer or a motion to dismiss. I am not passing upon the propriety of that motion, or its disposal.

The Commissioner, having resumed and completed the hearings, on January 12, 1932, certified the evidence to Secretary of State, under the provisions of our Federal Law, and ordered Factor into custody.

The proceeding in this Court now is by way of habeas corpus, and challenges the jurisdiction of the United States Commissioner in ordering Factor into custody. The character of that custody I am not considering at all. It seems, at least it has come to me by way of rumor, that it is unusual to say the least, but apparently neither side has objected; certainly the Demanding Government has not objected. Whether he was technically or actually in custody, is not before the Court at this time. I am treating the matfor as if he were actually in the custody of the Marshal
120 of this Court, under Commissioner Walker's order.

In disposing of the matter before me, I am governed by the Treaty between this country and Great Britain of 1889, which enlarged the number of extraditable offenses enumerated in the Treaty of 1842. Some question has been raised that that part of the Treaty of 1842, and which I now quote, provides, "That this shall only be done"—that is, the extradition,—"upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found would justify his apprehension and commitment for trial if the crime or offense had there been committed."

The purport of the argument seemed to be that those words were not contained in the Treaty of 1889. Am I right about that, gentlemen, that the Treaty of 1889 did not contain those words?

My judgment is that the Treaty of 1842 is still in force and that the Treaty of 1889 merely increased the number of extraditable offenses. If that were not so, it would be difficult, it seems to me, to reconcile the action of the Supreme Court of the United States in the Hinkle case, in the 190th and in the Kelly vs. Griffen case in the 241st, and the Mulligan case, reported in 50 Fed. 2nd Series, and I hold for the purpose of this hearing that the two Treaties are to be considered together, and that the provision of the
121 Treaty of 1842 carry on and become a party of the Treaty of 1889.

The essentials of our Treaties with Great Britain in cases of this sort are that the crime charged:—first, must be enumerated in the Treaty; second, made criminal by the De-

manding Government; and, third, made criminal by the laws where the accused is found.

The record shows that the crime charged in London was, "Receiving money knowing it to have been fraudulently obtained," and that such was in fact one of the crimes enumerated in the Treaty of 1889 between this country and Great Britain. The record also shows that "receiving money knowing it to have been fraudulently obtained" was made criminal by the laws of Great Britain. We are concerned in the present proceeding solely with the fact whether or not it was a crime in the place of asylum, State of Illinois. This is purely a question of fact. It can be nothing else.

The record shows evidence was offered by the Respondent of eminent judges and learned assistants to the State's Attorney of Cook County, Illinois. Each one of them testified
122 that as a matter of fact the obtaining of money, knowing it to have been fraudulently obtained, was not a crime in this State. The witnesses, the judges and the assistants to the State's Attorney were open for cross-examination. The Commissioner allowed the other side to offer evidence on the same point, the only limitation being that there should be five such witnesses on each side, and no more.

The main reliance placed by the Respondent, the Demanding Government, is upon the "Fraudulent Conveyance Act of Illinois." To summarize what that Statute condemns, I might put it in these words:

> Every person who shall be a party to a fraudulent conveyance made with intent to deceive and defraud others, or to defeat, hinder, or delay creditors, or others, of their just debts, damages, demands shall be fined not exceeding One Thousand Dollars.

That Statute does not make it a crime to receive money knowing it has been fraudulently obtained. There is no charge in the original proceeding before the Commissioner
123 that Factor had been party to a fraud or had made any conveyance with the intent to defraud his creditors. The Fraudulent Conveyance Act on the Illinois Statute books punishes fraudulent conveyance having certain defined results. There is nothing that can be found there to indicate that a man who receives money, knowing it to have been fraudulently obtained, is intended to be included.

We come now to the Griffen case which is the nub of the whole situation. It has been told the Court that Judge Lan-

dis in that case decided it upon the Illinois Fraudulent Conveyance Act. That may be so. I will say that Mr. Justice Holmes, in disposing of that case, used language which could be construed to the effect that there was in the State of Illinois a law making it a crime to receive money, knowing it to have been fraudulently obtained.

When we come to consider the issues in that case, we find that the crime charged by the Canadian Government was one which made it an offense to receive money, knowing it had been stolen from the Government, or a public official.

124 There were charges of perjury as well. Mr. Justice Holmes, after disposing of the matter of perjury, states:

> "The last charge, 'stealing or embezzling and receiving money fraudulently obtained,' needs a word of explanation. It may be assumed that there is no evidence of larceny or embezzlement, as commonly defined, but the receiving of property known to have been fraudulently obtained is a crime by the laws of both Canada and Illinois."

That is a very broad statement, but it is subject to the limitation of the very issues which the Supreme Court had before it. There was a crime committed in Canada, so charged at least, which was also a crime in the State of Illinois. The receiving of money in the State of Illinois, knowing that it had been fraudulently obtained from some public body or some public officer having public moneys in this charge.—that it had been fraudulently obtained by him, is made a crime under the laws of the State of Illinois.

That the lawyers in that case recognized the situa-
125 tion, no stress was made of our Fraudulent Conveyance Act. They cited the Larceny Statute, the Embezzlement Statutes, the Receiving Statutes, and I will say now that it makes no difference what you call the crime if, in fact, it is identical in substance in both jurisdictions, in the jurisdiction of the Demanding Government and the jurisdiction of the asylum. The only mention made of the Fraudulent Conveyance Act was one parenthetical statement in the brief of counsel for the Canadian Government. The reliance was placed upon different statutes, and Mr. Justice Holmes, in disposing of the case, when he used the language that "the receiving of property known to have been fraudulently obtained, is a crime by the laws both of Canada and of Illinois" must have meant, on the facts in that case, money fraudu-

lently obtained from or by a public official, and received by some person knowing of that fraud.

Now, it must be perfectly clear that the Supreme Court of the United States could not, and Mr. Justice Holmes did not intend to hold that it was an offense against the peace and dignity of the State of Illinois, when in fact it was not.

126 Lawyers on both sides have scoured the Acts of Legislature on this point. They have gone all through the Criminal Code. All that they can find is the Fraudulent Conveyance Act.

Mr. Justice Holmes did say, in general language, that receiving money from one, knowing it was fraudulently obtained, was a crime against the State of Illinois. Whether it was or not was a question of fact. The record in this case discloses that, in fact, there was no such crime in the State of Illinois. No statute has been produced, in the judgment of the Court, making it a crime.

The testimony of the expert witnesses, if I may so designate them, is all to the effect that there was no such crime on the books of the State of Illinois or at common law, as administered in the State of Illinois. The whole proceeding must stand or fall on that question of fact. The Treaty so provides, and I am of the opinion that there is no law in the State of Illinois similar to or substantially the same, making it a crime such as was defined in the jurisdiction of the Demanding Government.

127 An order may be prepared discharging the prisoner.

Now, before the order is entered, I assume that this case is of such importance that what I have said here, or my order, will be taken to the Court of Appeals for review. Under the Revised Statutes, Section 765, the Supreme Court of the United States promulgated rules with reference to the custody of prisoners, pending review of the proceedings in habeas corpus. There are three provisions.

The first is, pending review of a decision refusing a writ of habeas corpus, the custody of the prisoner shall not be disturbed. We are not concerned with that here.

Second, pending a review of a decision discharging the writ of habeas corpus, after it has been issued, the prisoner may be remanded to the custody from which he was taken by the writ or detained in other appropriate custody, or enlarged upon recognizance, with surety, as to the Court or judge

rendering the decision may appear fit in the circumstances of the particular case. We are not concerned with that.

128 Pending review of a decision discharging a prisoner on habeas corpus, he shall be enlarged upon recognizance with assurance for his appearance to answer and abide by the judgment of the Appellate proceedings and, if, in the opinion of the Court or judge rendering the decision, surety ought not to be required, the personal recognizance of the prisoner shall suffice.

I am asking now Counsel for the Demanding Government—it is your intention—

Mr. Overmyer: Of course it is, to appeal.

The Court: —to prepare the papers for appeal?

Mr. Overmyer: Yes.

The Court: Can you have them ready by tomorrow?

Mr. Overmyer: Yes, I am sure I can. Maybe this afternoon, if your Honor can be here.

The Court: What?

Mr. Overmyer: Maybe I can have them ready this afternoon if your Honor will be here.

The Court: Well, I shall be here at half past two, if that is convenient, or three o'clock.

Mr. Overmyer: I wil lwork as speedily as possible in any event.

The Court: What do you suggest as a bond?

Mr. Overmyer: Well, I think it should be Fifty Thou-

129 sand Dollars, your Honor. That was the bond fixed by the Commissioner.

The Court: That was the judgment of the Court before I asked you your judgment.

Mr. Overmyer: Well, that was the bond fixed by the Commissioner, although they agreed never to make that bail.

The Court: But when the appeal is allowed and the order discharging Factor is entered, it is on condition that Factor enter into a bond or recognizance, with surety, in the sum of Fifty Thousand Dollars, "To abide by the judgment of the Appellate proceedings."

Mr. Gilbert: We shall do so.

The Court: That will be found in the United States Code annotated, title 28, Rule 42 U. S. Supreme Court.

Mr. Stansbury: May it please your Honor, what nature and character of surety would you require?

The Court: What.

Mr. Stansbury: What nature and character of surety would you require?

The Court: Good surety.

Mr. Stansbury: Real estate or Liberty Bonds?

130 The Court: Oh, if they put up cash or Liberty Bonds, or Surety Company bond, that will be all right.

Mr. Gilbert: If your Honor please, we will put up Liberty bonds.

Mr. Stansbury: Your Honor will have to approve the bond?

The Court: Yes.

Mr. Overmyer: Your Honor, there is one thing I don't want to quibble over but your Honor makes some mention of the fact that I did not cross-examine the experts. The record, I believe, shows I did. Counsel will admit that I did cross-examine them. I produced no witnesses, but I cross-examined them.

Mr. Gilbert: Yes, you did.

The Court: The witnesses were not shaken on cross-examination and no evidence to the contrary was furnished.

Mr. Overmyer: No.

The Court: The whole thing as it presents itself to me is this question of fact, did we have such a law? Did we define such a crime in Illinois? Now, that is a question of fact. And, as I say, The Supreme Court can't say that it is

131 a fact when, in fact, it is not a fact.

Mr. Overmyer: May I suggest if it were a question of fact, then the Commissioner's finding could not be disturbed.

The Court: Why?

Mr. Overmyer: Because on the question of fact his judgment is supreme unless you can say there is no evidence to support it.

The Court: I can say there is no evidence in the record.

Mr. Overmyer: Of course.

The Court: The only evidence the Commissioner had was our Frandulent Conveyance Act, and he deferred to the opinion of Judge Landis in the Kelly versus Griffin case; he deferred to Judge FitzHenry in basing his opinion on the Kelly case. And the Commissioner himself said substantially were it not for the decisions of Judge Landis and Judge FitzHenry, and were it not for the Griffin case, he would have found the other way.

Now, I am thoroughly convinced, on an examination and an analysis of the Kelly case, that Mr. Justice Holmes did not mean what he said in its comprehensive sense. He said it was a crime in Illinois to do the thing that the man was charged with doing in Canada. That is all.

132 And thereupon, on the 12th day of February, A. D. 1932, Godfrey Haggard, British Consul General, as representative of the demanding government, upon leave of Court first had and obtained, filed as of the 11th day of February, A. D. 1932, his written petition praying leave to be made party respondent and to file an answer instanter, which motion was allowed. The answer was filed and the traverse heretofore filed to the Marshal's return was ordered to stand as a traverse to the said answer of the British Consul General.

And thereupon, to the rulings and holdings of the Court, as appearing in his opinion, aforesaid, the respondent, and said demanding government, by their counsel, on said 12th day of February, A. D. 1932, duly excepted.

And thereupon, on said 12th day of February, A. D. 1932, the Court entered an order as of the 11th day of February, A. D. 1932, discharging the relator from custody, finding:

1. That the Court has full and complete jurisdiction of the parties to this suit and the subject matter thereof.

2. As a fact that receiving money knowing the same to have been fraudulently obtained is not a crime under the laws of the State of Illinois.

3. That the said John Factor, at the time of the issuing and the serving of the said writ of habeas corpus was and is now unlawfully detained by the said H. C. W. Laubenheimer, and ought not to be remanded to his custody.

And thereupon counsel for the respondent duly excepted to the entry of said order, to the findings of the Court, and to the discharge of the relator from custody.

And thereafter, on the 12th day of February, A. D. 1932, the respondents and each of them filed their written petitions to appeal to the United States Circuit Court of Ap-

133 peals for the Seventh Circuit, together with a written assignment of errors, whereupon, the Court entered an order allowing the said appeals upon the respondent's giving a cost bond in the sum of $250.00, and issued a citation returnable March 12th, 1932, and allowed the respondents sixty days within which to settle their bill of exceptions.

Whereupon, counsel for the said John Factor agreed to waive service of the citation and thereupon the Court approved the appeal bond of the respondents and approved the bond of said John Factor in the sum of $50,000.00, as provided in the order of discharge.

Forasmuch, as the matters and things above set forth do not fully appear of record, the respondents, H. C. W. Laubenheimer, United States Marshal, and Godfrey Haggard, British Consul General, tende and present the foregoing as their Bill of Exceptions in said cause, and pray that the same may be settled, allowed, signed and sealed, and made a part of the record in said cause by this Court pursuant to the law in such cases; Certifi Jud

Which is accordingly done and ordered by the Court on this 21st day of March, A. D. 1932.

GEO. A. CARPENTER (Seal)
Judge.

Presented in open Court this 9th day of March, A. D. 1932.

CHARLES E. WOODWARD
United States District Judge.

O. K.

LEVINSON, BECKER GLENN AND SCHWARTZ
BUTLER, POPE, BALLARD & ELTING
F. R. OVERMYER
JOHN G. DRENNAN
Attys for Dem, Garth & U. S. Marshal

134 * * (Caption) * *

STIPULATION.

(Filed Mar 9 1932)

It Is Stipulated by and between the parties hereto that the printed abstract attached hereto, consisting of a true abstract of the depositions and documents of the demanding government and the testimony of witnesses produced by John Factor, and all orders, pleadings, motions and rulings made, entered and filed in the extradition proceeding before Edwin K. Walker, United States Commissioner in and for the Northern District of Illinois, Eastern Division, together with a true copy of all exhibits contained in said return so made by Edwin K. Walker, as United States Commissioner aforesaid, attached to said abstract may be considered for all purposes of this appeal and for all purposes shall take the place and be in lieu of the original return of said Edwin K. Walker, as United States Commissioner as aforesaid, to the writ of certiorari issued out of the United States District Court for the Northern District of Illinois, Eastern Division.

G. Gale Gilbert Jr.
Attorney for John Factor.

Franklin R. Overmyer
Attorney for H. C. W. Laubenheimer, United States Marshal, and the Kingdom of Great Britain, Demanding Government.

135 (Endorsed:) * * (Caption) * * Bill of Exceptions Presented and Stipulation Filed Mar 9 1932 at .....o'clock .....M. Charles M. Bates Clerk, F. R. Overmyer John G. Drennan 33 S. Clark. Rand 1625.

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

THE UNITED STATES OF AMERICA, ex rel. JOHN FACTOR, Petitioner, vs. H. C. W. LAUBENHEIMER, United States Marshal for the Northern District of Illinois, Respondent.	Petition for Writ of Habeas Corpus. — Certiorari to Honorable Edwin K. Walker, Commissioner.

ABSTRACT OF RECORD.

Page of Record

1 Return of Honorable Edwin K. Walker, United States Commissioner for the Northern District of Illinois, Eastern Division, to the writ of certiorari.

2 Writ of certiorari.

3 MOTIONS MADE—RULINGS OF COMMISSIONER THEREON AND OBJECTIONS THERETO.

May 20, 1931. Respondent did, in open court, make oral motion to be enlarged upon bail, whereupon said motion was continued from time to time until July 28th, upon which date the motion was allowed and bail fixed at the sum of $50,000.

Motion by demanding government for continuance.

Motion was granted and case continued to Monday, May 25, 1931.

May 25, 1931. Motion of demanding government to dismiss original complaint filed herein. Motion granted and original complaint herein dismissed.

Second complaint of demanding government filed and warrant issued thereon. Respondent waived service of warrant. Warrant returned.

Motion of respondent to dismiss complaint and quash warrant filed. Argument heard—ruling reserved—respondent excepted.

Motion of demanding government to read depositions into the record. Motion granted. Reading of depositions commenced.

May 26, 1931. Objections of respondent to authentication of depositions. Ruling reserved. Reading of depositions continued.

4 May 27, 1931. Reading of depositions continued. Argument on motion to dismiss resumed. Ruling on motion to dismiss taken under advisement.

May 28, 1931. Reading of depositions continued.

May 29, 1931. Reading of depositions continued.

Motion of demanding government for continuance for two weeks' time within which to have depositions printed.

Cause adjourned. Continued to June 8, 1931.

June 8, 1931. Cause continued for checking of printed depositions to Monday, June 17, 1931, at 2 o'clock.

June 17, 1931. General and special objections of respondent to depositions filed. Argument thereon set for June 22d.

June 22, 1931. Second motion to dismiss complaint and quash warrant filed.

Argument on general objections to depositions.

June 23, 1931. Argument on general objections to depositions resumed.

June 24, 1931. Argument of general objections to depositions resumed. General objections taken with cause.

5 July 7, 1931. Argument on second motion to dismiss warrant and quash writ. Motions taken under advisement.

July 14, 1931. Motion to dismiss warrant and quash writ overruled on ground that "demanding government should not be concluded here on the face of the complaint and warrant but that it should have its opportunity to present its evidence and depositions * * * and that this case should be determined upon the whole record as and will hereafter be made." Respondent excepted to ruling of court. Cause continued to July 20, 1931.

July 20, 1931. By agreement of parties, question of respondent's right to bail reargued. Motion for bail taken under advisement.

July 28, 1931. Motion for bail granted. Bail fixed at $50,000. (At this time counsel for demanding government gave notice in open court that application would be made to a Judge of the Circuit or District Court to set aside said order on bail.) Cause adjourned to August 3d.

August 3, 1931. Motion of respondent to continue hearings pending appeal on habeas corpus to Circuit Court. Argument on motion. Motion taken under advisement.

August 6, 1931. Further argument on motion to continue hearings pending appeal on habeas corpus to Circuit Court.

6 August 11, 1931. Ruling on motion to continue hearings pending appeal on habeas corpus to Circuit Court. Denied. Respondent excepts.

August 13, 1931. Reuewal of argument on motion to dismiss. Argument on special objections to depositions.

August 17, 1931. Continuation of argument on special objections to depositions.

August 18, 1931. Argument on special objections to depositions.

August 20, 1931. Argument on special objections to depositions.

August 21, 1931. Argument on special objections to depositions.

August 24, 1931. Argument on special objections to depositions.

August 25, 1931. Argument on special objections to depositions.

August 26, 1931. Argument on special objections to depositions.

August 27, 1931. Argument on special objections to depositions.

August 28, 1931. Argument on special objections to depositions.

September 1, 1931. Argument on special objections to depositions.

September 3, 1931. Argument on special objections to depsitions. Special objections taken with cause. Ruling reserved.

September 8, 1931. Argument on law of England.

September 9, 1931. Argument on law of England. Motion of respondent for continuance to bring witnesses from abroad. Motion granted. Cause continued to September 25th.

7 September 24 to October 16, 1931. Hearing of witnesses for respondent, including legal expert witnesses.

October 20, 1931. Motion by respondent at close of all of the evidence to dismiss complaint and quash warrant. Motion taken with case and overruled December 28th; to which ruling respondent excepted.

December 28, 1931. Opinion and announcement of conclusions made.

January 12, 1932. Order certifying evidence and testimony to Secretary of State entered. Commitment issued; to which respondent excepted.

EDWIN K. WALKER,
United States Commissioner for the Northern District of Illinois, Eastern Division.

8 The Commissioner: It appears that the representatives of the demanding government in the matter of the extradition proceedings here and the respondent, Mr. Factor, and his counsel, are present. I had set this time for my decision in this case. I want to say just a word about the history of the proceeding before I announce my findings and read my reasons for my findings.

The respondent first came before me on a complaint that was filed by Mr. Godfrey Haggard, British Consul, Chicago, upon which a warrant was issued, and several days thereafter, as I recall about eight days thereafter, respondent

9 surrendered himself to the Marshal, and was brought before me. Motion was at once made on behalf of the respondent to enlarge him upon bail, and to dismiss the complaint. That complaint was upon information and belief. An adjournment for some days was had. I then denied the motion then made at that time to admit the respondent to bail, remanded him to the custody of the Marshal, and postponed the hearing of the motion then made. At the time that case came up for hearing again, the demanding government dismissed its complaint on motion and prayed leave to file a new complaint. The complaint was then ready and was sworn to. The defendant was present in court and instantly surrendered

to our custody upon this second complaint, which is the complaint in the pending case.

This case has been very extended in its hearing. Ordinarily an extradition proceeding is a simple proceeding and ought not to take long. Hearings are most generally rather formal and consist mainly in the examination of documentary evidence which has been transmitted, authenticated by proper officers, but the extraordinary and unusual features in this case have caused its prolongment maybe a little bit more than was necessary. As I look back over it, I cannot see that we could have very well done otherwise than we did in the manner of the hearings and the most of the continuances. Three or four weeks, I don't recall just now, but some three weeks I think at least was taken early in the proceeding in order to enable the evidence of the demanding government to be printed into a book form. A great deal of time was taken in the hearing upon the motion to admit the respondent to bail. The evidence of the demanding government was lengthy, and specific objections were in the course of the proceedings made to every item of the evidence. Numerous motions were made. A habeas corpus proceeding was initiated and sued out during the pendency of this case, which habeas corpus proceeding was heard before the District Judge. Motion was made to suspend proceedings here while an appeal from the decision on that habeas corpus was pending. An adjournment was taken at the request of the respondent to bring witnesses from abroad. The arguments have been very lengthy, the authorities cited numerous. The questions, some of them, involved, were of great closeness and nicety. I say this in explanation of the length of the proceedings.

In making my decision here, I have thought it well to express my views in an opinion, which I have transcribed here. It is a little longer than I would have liked to have had it, but it is difficult to shorten it much, and I shall now read that opinion, which will lead to my conclusions. There are some motions that have been made of record here that will have to be disposed of which I will do at the close of the reading of this opinion.

An extradition proceeding is not a trial. The Commissioner hearing such a proceeding is not a court in the true sense of that term. Such Commissioner, however, is necessarily vested with special judicial function. Mr. Justice

Brown of the United States Supreme Court, in the case of *Grin* v. *Shine,* 187 U. S. page 181, has said:

"The Commissioner is in fact an agent of the court, possessing independent though subordinate judicial powers of his own."

Having acquired jurisdiction in the manner provided in the statute governing the proceedings, it is provided that:

"Evidence of criminality may be heard and considered. If on such hearing he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy
12 of all the testimony taken before him, to the Secretary of State."

The treaty involved in this cause provides:

"That this shall only be done upon such evidence of criminality as according to the laws of the place where the fugitive or the person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had there been committed."

This extradition proceeding is brought under the provisions of the Convention of 1889, commonly known as the Blaine-Pauncefote Treaty, in which certain offenses were added to these enumerated in Article 10 of the then existing Treaty of 1842, known as the Webster-Ashburton Treaty.

Section 3 of Article 1 of said Convention of 1889 provides for extradition for "embezzlement; larceny; receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained."

This convention also provides as follows:

"Extradition is also to take place for participation in any of the crimes mentioned in this convention or in the aforesaid Tenth Article, provided such participation be punishable by the laws of both countries."

It is therefore incumbent upon the demanding govern-
13 ment to show the offense charged to be under the provisions of the treaty and also to exhibit such evidence of criminality as according to the laws of the place where the respondent charged is found would justify his apprehension and commitment for trial if the offense had there been committed. In the instant case, that place is the State of Illinois.

The complaint here charges that the respondent, in Lon-

don, England, received certain sums from a corporation, known as the Broadstreet Press Limited, knowing the same to have been fraudulently obtained. There is no charge in the complaint of embezzlement or larceny, or receiving money, valuable security, or other property, knowing the same to have been embezzled or stolen. Counsel for the demanding government has contended that there is some evidence tending to prove larceny as bailee or larceny by trick. This is not charged in the complaint, and I now say that I am unable to discover in the record sufficient competent evidence to sustain such finding. I am therefore constrained, in the light of the rules regarding the interpretation of treaties and the testing of the evidence of criminality, to determine this case upon the charge of receiving sums knowing the same to be fraudulently obtained.

The offense charged in the complaint is clearly one
14 enumerated in the treaty. The determination as to whether or no this charge and the evidence of criminality here shown bring this respondent within the treaty by a correct interpretation thereof is not without difficulty.

There is no criminal offense described in the statutes of Illinois in exact correspondence with the offense charged in the complaint. Receiving money, valuable security, or other property knowing the same to have been fraudulently obtained is not in specific language made an offense by the laws of this state.

In the interpretation of treaties in considering extradition proceedings, our courts have laid down principles which I am bound to consider. In the case of *Grin* v. *Shine, supra*, opinion by Mr. Justice Brown, the United States Supreme Court has said:

"In the construction and carrying out of such Treaties the ordinary technicalities of criminal proceedings are applicable only to limited extent. Foreign powers are not expected to be versed in the niceties of our criminal laws, and proceedings for surrender are not such as put in issue the life or liberty of the accused. They simply demand of him that he shall do what all good citizens are required and ought to be will-
15 ing to do, viz.: submit themselves to the laws of their country. Care should doubtless be taken that the Treaty be not made a pretext for collecting private debts, wreaking individual malice, or forcing the surrender of political offenders."

Also:

"These Treaties should be faithfully observed and interpreted with the view to fulfill our just obligations to other powers without sacrificing the legal constitutional rights of the accused."

In *Wright* v. *Henkle,* 190 U. S. pages 40-61, the Supreme Court says:

"When by the law of Great Britain and by the law of the state in which the fugitive is found, the fraudulent acts charged to have been committed are made criminal, the case comes fairly within the treaty which otherwise would manifestly be inadequate to accomplish its purpose."

In *Tucker* v. *Alexandroff,* 183 U. S. 434, the court says:

"As treaties are solemn engagements entered into between independent nations for the common advancement of their interests and the interests of civilization, and as their main object is not only to avoid war and secure a lasting
16 and perpetual peace, but to promote a friendly feeling between the people of the two countries, they should be interpreted in the broad and liberal spirit which is calculated to make for the existence of a perpetual amity, so far as it can be done, without the sacrifice of individual rights or those principles of personal liberty which lie at the foundation of our jurisprudence. It is said by Chancellor Kent in his Commentaries, Volume 1, page 174:

"'Treaties of every kind * * * are to receive a fair and liberal interpretation according to the intentions of the contracting parties, and to be kept with the most scrupulous good faith.'"

The evidence of the demanding government was offered with certificate of authentication by the United States Ambassador at London. It consists in addition to certified copies of information, warrants, etc., of the depositions of some sixty-four witnesses together with some two hundred exhibits. Much of this evidence is of such character as to fall short of tests ordinarily applied in a trial. Motion was made by counsel for the respondent to exclude this evidence. This evidence seems to have been certified conformable to the provisions
17 of the statute and I am compelled to receive it. In determining what weight should be given to the evidence, I have striven to conform to tests governing such proceedings.

In *Collins* v. *Leisel,* 250 U. S. 309, it is said, "The phrase 'such evidence of criminality' as used in the treaty, refers

to the scope of the evidence or its sufficiency to block out those elements essential to a conviction. It does not refer to the character of specific instruments of evidence, or to the rules governing admissibility. Thus, unsworn statements of absent witnesses, may be acted upon by the committing magistrate, although they could not have been received by him under the law of the state on a preliminary examination."

Much of this evidence I have disregarded. Without specifying in detail, I will say, for illustration, that statements of the four or five witnesses who were alleged victims of the so-called fraud, that "they had investigated and found the stocks purchased to be worthless" should be disregarded, but their testimony as to the facts of the purchase and the inducements thereto should be regarded and given such weight as the circumstances justify.

The testimony discloses that the Broadstreet Press, Ltd., had a brief but remarkable career beginning in 1928 and that in one way or another it continued activities until the
18 fall of 1930. Directors testified that they had no real management or control and that their activities respecting the affairs of the corporation were almost wholly at the direction and dictation of other persons, in some instances the respondent, who did not appear to have been officers.

Cyril Thomas Newman, a witness for the demanding government, who had been appointed official receiver of the company, testified at length as to what the records of the company disclosed as to the conduct of its affairs. It appeared that the net receipts of the Broadstreet Press, after its organization in 1928 and to the end of 1928, were in the neighborhood of £29,000; for the year 1929 that total receipts of £83,045 are shown of which £78,000 were loans; that up to the end of February, 1930, total receipts of the company were £115,848, of which £108,720 were loans; that in the month of March, 1930, receipts were £102,353, no part thereof being through loans; that during the eight months from March to October, 1930, receipts were £1,619,726. The bulk of this sum appears to have been received from clients or proceeds of sales of securities received from clients.

It appears that the company was dealing with its clients in listed stocks of certain companies, particularly Edison
19 Bell, Swears & Wells, Tri-plex Safety Glass and Guy Motors; that the company advised its clients to purchase these stocks at certain figures and resell at an advance. For

example, it advised the purchase of Edison Bell at 14 shillings a share and the resale of this stock at 23 shillings a share; the purchase of Guy Motors at 15 shillings and resale at 19 shillings; the purchase of Tri-plex Safety Glass at 25 shillings and a little later the sale of 35 shillings; the sale of Swears & Wells at 21 shillings.

It is disclosed from the deposition of Newman that the company had bought 211,669 shares of Edison Bell at 23 shillings or £241,149, which their clients had bought at 14 shillings; that they sold 60,729 shares of Guy Motors at 15 shillings or £45,849 and repurchased 59, 610 shares at 19 shillings or £56,627; that they sold 127,843 shares of Swears & Wells at £94,162 of which they had repurchased 114,347 shares at £118,767; that they had sold 62,778 shares of Triplex Glass at 25 shillings and repurchased 58,321 shares at 35 shillings; these transactions showing profits to the clients and losses to the company as follows: Edison Bell £73,633, Guy Motors £10,732, Swears & Wells £24,605, and Tri-plex Safety Glass £20,064. It is claimed that these transactions were carried on as a lure to facilitate subsequent sale of worthless stock.

The evidence discloses that these clients were advised to reinvest in Asbestos & Holding Trust, Ltd., Rhodesia Border Mining Corporation, Ltd., and Vulcan Copper Mines, Ltd., which stocks the demanding government contends were worthless stocks.

It appears that circulars marked private and confidential, were sent out by the Broad Street Press, Ltd., to promote the sale of these several stocks. As to the Asbestos & Holding Trust, Ltd., the circular recited that this stock was offered by the company as principal. As to the stock of the other two companies, nothing was said on that point. It appears the company had acquired the Asbestos & Holding Trust, Ltd., stock for £52,500 and sold the same for £297,405; that the company sold the Rhodesia Border Mining shares for £623,790, for which it appears they had paid the sum of £33,000. It appears similar purchases and resales at great profit were made of the Vulcan Copper Mines, Ltd., stock.

A director, Osborne, deposed that respondent known to him as J. Walker, had been introduced to him and that he, Walker, had informed him that he was about to publish a financial paper and asked him to become a director. A financial paper was published by the Broad Street Press carry-

ing the name of Osborne as editor, although Osborne testified that he had nothing to do with the editing of said paper. Later the name of the paper was changed, the name of Osborne dropped and the name of Norman D. Spencer
21 substituted as editor. The name of Norman D. Spencer, editor, appeared upon several letters sent to clients, with the name of Broad Street Press as proprietors. Some of these letters contained advice to the effect that Mr. Spencer had unique source of inside information. Letters were sent to clients purporting to have been signed by Norman D. Spencer advising purchase of stocks in question. There is no evidence in the record as to the identity of Norman D. Spencer and so far as the record appears, no one seems to have known him. One witness, however, an employee of the Broad Street Press, deposed that she was instructed when any inquiries came for Mr. Spencer to refer them to the room at the office of the Broad Street Press which was occupied by the respondent and one Klein.

The evidence discloses that from the 13th day of June, 1930, to the 27th day of October, 1930, payments by check were made to the respondent under the name of H. Wise, amounting to £709,180. On the 27th day of October, 1930, it appears that a meeting of the officers of the company was held to discuss voluntary liquidation. At that time it appears that there was a balance of £6,569 to the credit of the company in Bank. £6,000 on that day was paid to the respondent under the name of H. Wise, leaving a balance of £569.

22 The nature of the evidence and testimony of the demanding government was such that the door was opened for explanatory testimony on behalf of the respondent. No testimony was offered by the respondent respecting the transactions of the Broad Street Press, Ltd., and the receiving therefrom of the moneys charged to have been obtained by him.

The respondent produced two witnesses. One an assayor who testified respecting certain samples of ores that had been submitted to him, claimed to have been taken from the mining properties and a witness one, Major Harry Brian Pearson, a mining expert, who testified at great length respecting his examination of the properties alleged to be owned by the said mining companies. While this testimony disclosed the indication of the presence of ore in the properties, it appears that none of them are in any sense working mines or that

ore bodies of any great extent have been uncovered and blocked out. The prospects appear to be only prospects. It may be there are very good prospects but the extent of the ore bodies, the costs of developments and carrying on mining operations were but estimates and estimates only. It appears that while Major Pearson was making these investigations in Africa, the scheme for the sale of the stock of the companies was then well under way in London.

Numerous exhibits were offered in evidence by the respondent, consisting of maps, plats and reports respecting the
23 properties. What purported to be copies of contracts for the purchase of rights to these properties, were also offered in evidence by the respondent. I am unable to determine from these whether or no there was any vested property rights in the companies as to these so-called mining properties or claims.

Considering the evidence produced at the hearing, I am of the opinion that the Broad Street Press, Ltd., was engaged in the carrying on of a fraudulent scheme respecting the sale of the stocks in question.

Testimony was offered by the respondent of certain witnesses learned in the law upon the question of whether or no "receiving money knowing the same to have been fraudulently obtained" is an offense in Illinois. One of these witnesses was formerly a Justice of the Supreme Court of Illinois. One was a Judge of the Circuit Court of Cook County, and one a Judge of the Superior Court of Cook County, both of whom have had quite an extended experience as Judges of the Criminal Court of Cook County, a court of general criminal jurisdiction. Two other witnesses on these points were both men of long experience as Assistant State's Attorneys in this county.

It is unusual to receive evidence of the law as a matter of fact, except where it is sought to prove the law of a foreign jurisdiction. Explanation of why this evidence was received may be timely here. It was contended that in my capacity as United States Commissioner, I am not to take judicial
24 notice of the laws of Illinois. I do not wish it understood that I agree with this contention. I did, however, in consideration of certain authorities that were cited, receive this testimony in exercise of the right of discretion in that regard.

These witnesses testified to the effect that "receiving money

known to have been fraudulently obtained" is not an offense in Illinois. However, it seems that the District Court of the Northern District of Illinois of the United States Supreme Court has considered and passed upon that question.

This brings us to the consideration of the case of *Kelly* v. *Griffin*, 241 U. S. page 6. In that case the respondent Kelly was held for extradition to Canada under the same treaty here involved, by a United States Commissioner of this district. The respondent was there charged with perjury, obtaining money by false pretenses, and receiving moneys knowing the same to have been fraudulently obtained. This case was taken by habeas corpus to our United States District Court here, and ultimately to the United States Supreme Court.

I have made a very exhaustive examination in this case. I have examined the briefs of the appellant and of the demanding government, and carefully considered the opinions of the District Judge Kenesaw M. Landis and of Justice Holmes in the Supreme Court. District Judge Landis said:

"There is a dearth of authority, as far as the argument before me was concerned, and as far as my independent examination of it is concerned, on this particular clause. But in the State of Illinois there is a statute which makes it an offense for a man to receive money which is embezzled by another man. There is a statute which in my opinion makes it an offense for a man to receive money that has been fraudulently obtained to his knowledge by another person from somebody else. 'Every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance, had, made or contrived with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts,' etc., 'or who being a party as aforesaid at any time shall wittingly or willingly put in use, avow,' etc., 'or defend the same or any of them as true, and done, had or made in good faith or upon good consideration, or shall sell or assign, shall be fined $1,000.' That is the only statute I find in Illinois, strange enough, that meets the situation here."

He further says in his opinion:

"The good faith that must characterize the treatment of a demand by one Government on another Government for the

surrender of a fugitive charged with an extraditable offense would not permit the United States, on the showing of
26 fact made here, if there was no charge of perjury and no charge of obtaining money by false pretenses, to refuse to give up Kelly on that charge, in my opinion, even though Kelly himself was a party to the fraud, the object and purpose and result of which was separating the Canadian Government from its money."

The writ of habeas corpus was denied. This case was carried to the United States Supreme Court and affirmed. In the opinion by Mr. Justice Holmes it is said:

"It may be assumed that there is no evidence of larceny or embezzlement as (commonly) defined, but the receiving of property known to have been fraudulently obtained is a crime by the laws of both Canada and Illinois. There may be a doubt whether the appellant, if a party to the fraud, received the money of the Government directly from it, or through a third hand so as to be guilty under this count of the complaint. We are not prepared to pronounce his detention upon the count unjustifiable in view of the finding."

It, therefore, seems clear that the question as to whether or no an extradition can be had under the treaty and upon this charge, has been determined by the District Court of this district, and by the United States Supreme Court.

During these proceedings this respondent applied for writ of habeas corpus to our District Court, raising this ques-
27 tion. District Judge Fitzhenry in his opinion said:

"The court feels that the expression of Mr. Justice Holmes is conclusive upon this court. The question has heretofore been passed upon by the Supreme Court of the United States, and it is not for this court to presume to reverse the Supreme Court of the United States. If that holding is to be changed, it is to be changed by the Supreme Court of the United States itself."

I concur with Judge Landis that no other statute in Illinois makes the act of receiving moneys which are the proceeds of a fraud an offense. I cannot assume that the Supreme Court had any other statute in mind. I am bound by its ruling.

It has been most earnestly contended by the respondent that this case does not correctly state the law of Illinois and that the Illinois statute referred to, does not properly bring the acts therein made an offense, within the purview of the

treaty. This statute is substantially declaratory of the common law of England and is practically identical with the statute of 13th Elizabeth, Chapter 5. The common law of England, prior to fourth year of James II, except where changed by statute, is the law in Illinois. (Chapter 28, Revised Statutes of Illinois.) It may well be said that whether or no the acts made an offense in said statute come within the purview of the treaty, is a question of great nicety and closeness. It may be well regarded as one which ought to have further judicial interpretation by the courts of
28 ultimate review.

This opinion indicates my views on the evidence and the questions of law, so that I am constrained to find that the demanding government have complied with the statute, and hold the defendant for extradition under the proper order. Finding and order to that effect I will now enter of record—

Mr. Gilbert: If your Honor please, may I interrupt?

The Commissioner: However, I will now indicate the rulings upon the pending motions. The motion to strike all of the evidence, exclude all of the evidence, is overruled. Motion to dismiss at the close of the demanding government's case is overruled. I think those are the only motions that were made and that are undisposed of.

Mr. Gilbert: Your Honor, may I address the Court?

The Commissioner: Yes.

29 IN THE MATTER OF THE APPLICATION FOR THE EXTRADITION OF HARRY WISE, alias J. Factor, alias GUEST, alias J. Walker, a fugitive from justice under the treaty between the United States and Great Britain.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

To the Honorable Henry L. Stimson,
Secretary of State of the United States:

I, EDWIN K. WALKER, a United States Commissioner for the Northern District of Illinois specially authorized and empowered to perform all the duties of a United States Commissioner under the extradition laws and treaties of the United States, do hereby certify to the proceedings in the above-entitled matter to be as follows:

On the 25th day of May, 1931, GODFREY HAGGARD, his Brittanic Majesty's Consul General in Chicago, made complaint under oath and in writing before me, charging HARRY WISE, alias J. FACTOR, alias GUEST, alias J. WALKER, with having committed certain crimes of receiving money knowing the same to have been fraudulently obtained, as set forth in said complaint, at the City of London, England, within the jurisdiction of the Kingdom of Great Britain, as follows:

"That heretofore, and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the City of London, England, and within the jurisdiction of his Britannic Majesty, one HARRY WISE, alias J. FACTOR, alias GUEST, alias J. WALKER, received from Broad Street Press Limited the sums of £15,000 and £70,000, respectively, knowing the same to have been fraudulently obtained;

30 That heretofore, and on or between the 3rd day of October, 1930, and the 27th day of October, 1930, at the aforesaid City of London, England, said HARRY WISE, alias J. FACTOR, alias GUEST, alias J. WALKER, received from Broad Street Press Limited the sum of £131,000 as follows:

On the 3rd day of October, 1930, the sum of £30,000
On the 14th day of October, 1930, the sum of £10,000

On the 16th day of October, 1930, the sum of £20,000
On the 15th day of October, 1930, the sum of £25,000
On the 17th day of October, 1930, the sum of £40,000
On the 27th day of October, 1930, the sum of £6,000

That heretofore, and on or between the 14th day of June, 1930, and the 30th day of September, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, did receive from Broad Street Press Limited the sum of £242,500, knowing the same to have been fraudulently obtained."

And said complaint further charges that the crimes therein set forth are crimes provided for in the treaties for the extradition of fugitives between the government of the said Kingdom of Great Britain and the government of the United States and that the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker is a fugitive from the justice of England and was within the said Northern District of Illinois.

Accordingly, thereupon, on the 25th day of May, 1931, I issued a warrant for the apprehension of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, said warrant being directed to the United States Marshal for the Northern District of Illinois and any Marshal or his deputies in the United States, and the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, having voluntarily surrendered himself to the said Marshal for the Northern District of Illinois, was, on the 25th day of May, 1931, arraigned before me.

31 Thereupon, on various days hearing was had upon said complaint and evidence was offered and received on behalf of the demanding government, consisting of depositions and exhibits, and evidence and exhibits were offered and received on behalf of the respondent, Harry Wise, alias J. Factor, alias Guest, alias J. Walker. The said respondent, from the time of his arraignment until January 12th, 1932, was kept in the custody of the said Marshal for the Northern District of Illinois.

On the 12th day of January, 1932, at my office in the City of Chicago and in the District aforesaid, the matter coming on for final hearing and disposition, and there appearing for the government of the Kingdom of Great Britain Franklin R. Overmyer and A. J. Petit, Jr., and for the respondent Messrs. Levinson, Becker, Glenn & Schwartz, with George Gale Gilbert, Jr., and Don M. Peebles and David D. Stansbury

of counsel, and it appearing to my satisfaction that there is sufficient evidence to sustain the charges under the provisions of the said treaties, I accordingly issued my mittimus for his commitment dated the 12th day of January, A. D. 1932, a true copy thereof being attached hereto and made a part hereof by reference thereto.

Thereto I annex a copy of the depositions, testimony and exhibits, together with a true copy of the complaints, war-
32 rants, motions, objections, and pleadings, taken, had, made and received before me in said hearing, and I hereby certify said copies to be true copies thereof.

WITNESS MY HAND AND OFFICIAL SEAL this 12th day of January, One Thousand Nine Hundred and Thirty-two.

EDWIN K. WALKER,
United States Commissioner for the Northern District of Illinois, and a Commissioner duly authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States concerning the extradition of fugitives from justice of a for-
Seal *eign government under treaty or convention between this and any foreign government.*

ay 5, 33 Before Honorable Edwin K. Walker, United States Commissioner.

IN THE MATTER OF THE APPLICATION FOR EXTRADITION OF HENRY WISE, alias J. FACTOR, alias GUEST, alias J. WALKER, a fugitive from justice, under the Treaty between the United States and Great Britain.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

GODFREY HAGGARD, his Britannic Majesty's Consul General, Chicago, being first duly sworn, upon his oath deposes and says that he is informed and believes and thereupon states:

That heretofore and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the City of London, England, and within the jurisdiction of his Britannic Majesty, one Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press, Ltd., the sum of £15,000 sterling and £70,000 sterling, respectively, knowing the same to have been fraudulently obtained.

Second, that heretofore and on or between the third day of October, 1930, and the 27th day of October, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press, Ltd., the sum of £131,000 sterling as follows:

On the third day of October, 1930, the sum of £30,000,
On the 14th day of October, 1930, the sum of £10,000,
On the 16th day of October, 1930, the sum of £20,000,
On the 16th day of October, 1930, the sum of £25,000,
On the 17th day of October, 1930, the sum of £40,000,
On the 27th day of October, 1930, the sum of £6,000,

knowing the same to have been fraudulently obtained;

Third, that heretofore and on or between the 14th day of June, 1930, and the 30th day of September, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press, Ltd., the sum of £242,500 sterling, knowing the same to have been fraudulently obtained;

That at the times and place aforesaid the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, did, by means
34 of false pretenses obtain the aforesaid sums from the Broad Street Press, Ltd., thereby committing the crime of obtaining money by means of false pretenses.

Affiant further states that the information upon which this complaint is based is derived from dispatches to him from his Britannic Majesty's Embassy at Washington and from his Britannic Majesty's Consul General at New York City, wherefrom it appears that warrants have been issued for the arrest of said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, and requesting his apprehension;

That the foregoing crimes with which the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is charged are indictable crimes in the Kingdom of Great Britain, and an offence within the Treaties between the United States and the Kingdom of Great Britain and Ireland;

That said Harry Wise, alias J. Factor, alias Guest, alias

J. Walker, is a fugitive from the Kingdom of Great Britain and is now within the territory of the United States.

Further affiant sayeth not.

GODFREY HAGGARD,
British Consul General.

Subscribed and sworn to before me this 5th day of May, A. D. 1931.

EDWIN K. WALKER,
United States Commissioner for the Northern District of Illinois, and Commissioner duly authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States concerning the extradition of fugitives from justice of a foreign government under a treaty or convention between this and any foreign government.

Seal

35 *The President of the United States of America*
To any Marshal of the United States to
the Deputies of any such Marshal
or either of them.

Issued 1931.

WHEREAS, a complaint has been made on oath under the Treaty between the United States of America and Great Britain, signed at Washington on the Ninth day of August, One Thousand Eight Hundred and Forty-two, the ratifications whereof were exchanged at London on the Thirteenth day of October, in the same year, and a convention supplementary to the said Treaty between the same high contracting parties, concluded at Washington on the Twelfth day of July, One Thousand Eight Hundred and Eighty-nine, the ratifications whereof were exchanged at London on the Eleventh day of March, One Thousand Eight Hundred and Ninety; and the further convention supplementary to the said Treaty, concluded at Washington on the Thirteenth day of December, One Thousand Nine Hundred, the ratifications whereof were exchanged at Washington on the Twenty-second day of April, One Thousand Nine Hundred and One; and a further convention supplementary to the said Treaty, concluded at London on the Twelfth day of April, One Thousand Nine Hundred and Five, the ratifications whereof were exchanged at Wash-

ington on the Twenty-first day of December, One Thousand Nine Hundred and Six, before me, Edwin K. Walker, a commissioner appointed by the District Court of the United States for the Northern District of Illinois, and also a Commissioner especially appointed and authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States, concerning the extradition of fugitives from justice of a foreign government, under a Treaty or convention between this and any foreign government, for the apprehension and delivery up of certain offenders;

That heretofore and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the City of London, England, and within the jurisdiction of his Britan-
36 nic Majesty, one Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sums of Fifteen Thousand Pounds (£15,000) Sterling and Seventy Thousand Pounds (£70,000) Sterling, respectively, knowing the same to have been fraudulently obtained; that heretofore and on or between the 3rd day of October, 1930, and the 27th day of October, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press Limited, the sum of One Hundred and Thirty-one Thousand Pounds (£131,000) Sterling, as follows:

On the 3rd day of October, 1930, the sum of £30,000,
On the 14th day of October, 1930, the sum of £10,000,
On the 16th day of October, 1930, the sum of £20,000,
On the 16th day of October, 1930, the sum of £25,000,
On the 17th day of October, 1930, the sum of £40,000,
On the 27th day of October, 1930, the sum of £6,000,

knowing the same to have been fraudulently obtained; that heretofore and on or between the 14th day of June, 1930, and the 30th day of September, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press Limited, the sum of Two Hundred and Forty-two Thousand Five Hundred Pounds (£242,500) Sterling, knowing the same to have been fraudulently obtained;

That the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker is a fugitive from the justice of England, Kingdom of Great Britain, and is now within the territory of the United States, and a warrant has been issued at Lon-

don, England, aforesaid, for the apprehension of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, for the offenses herein charged; and that the crime with which the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is herein charged is an offense within the Treaties between the United States and Great Britain.

NOW, THEREFORE, WE COMMAND YOU FORTHWITH to take said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, and bring him before me, the said Commissioner, at my office
37 in Room 878, Federal Building, City of Chicago, State of Illinois, or before the nearest Justice, Judge or Commissioner in the District in which said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is apprehended, authorized to act in any proceeding for the extradition of fugitives from justice of a foreign government, as provided in Section 5270 of the Revised Statutes of the United States, in order that the evidence of the criminality of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, may be heard and considered and if deemed sufficient to sustain the charge that the same may be certified, together with a copy of the proceedings to the Secretary of State, that a warrant may issue pursuant to the Treaties.

WITNESS MY HAND AND OFFICIAL SEAL this 25th day of May, A. D. 1931.

EDWIN K. WALKER,
United States Commissioner and also a Commissioner especially appointed to execute the provisions of Title LXVI of the Revised Statutes of the United States for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivery of certain offenders.

(United States Commissioner Seal attached)

38 Before Edwin K. Walker, Esq., United States Commissioner.

IN THE MATTER OF THE APPLICATION FOR EXTRADITION OF HARRY WISE, alias J. FACTOR, alias GUEST, alias J. WALKER, a fugitive from justice under the Treaty between the United States and Great Britain.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

Dat
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GODFREY HAGGARD, his Britannic Majesty's Consul General at Chicago, Illinois, being first duly sworn, upon his oath deposes and says that he is informed and believes and thereupon states:

1. That heretofore and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the City of London, England, and within the jurisdiction of his Britannic Majesty, one Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sums of £15,000 and £70,000, respectively, knowing the same to have been fraudulently obtained;

2. That heretofore and on or between the 3rd day of October, 1930, and the 27th day of October, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sum of £131,000 as follows:

On the 3rd day of October, 1930, the sum of £30,000,
On the 14th day of October, 1930, the sum of £10,000,
On the 16th day of October, 1930, the sum of £20,000,
On the 16th day of October, 1930, the sum of £25,000,
On the 17th day of October, 1930, the sum of £40,000,
On the 27th day of October, 1930, the sum of £6,000,

knowing the same to have been fraudulently obtained;

3. That heretofore and on or between the 14th day of June, 1930, and on the 30th day of September, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, did receive from Broad Street Press Limited the sum of £242,500, knowing the same to have been fraudulently obtained;

39 4. That the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is a fugitive from the justice of England, Kingdom of Great Britain, and is now within the territory of the United States, and a warrant has been issued at Lon-

don, England, aforesaid, for the apprehension of said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, for the offenses herein charged;

5. That the crime with which the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is herein charged is an offense within the Treaties between the United States and Great Britain;

6. That the deponent's information and belief are based upon properly certified copies of the warrant of arrest issued in London and of depositions of witnesses received at the British Consulate General, Chicago, from the Secretary of State for Foreign Affairs in London, England, all of which are ready to be produced at the hearing of this cause.

GODFREY HAGGARD,
British Consul General.

Subscribed and sworn to before me this 25th day of May, A. D. 1931.

EDWIN K. WALKER,
United States Commissioner for the Northern District of Illinois, and Commissioner duly authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States, concerning the extradition of fugitives from justice of a foreign government under a treaty or convention between this and any foreign government.

Seal

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40 *The President of the United States of America*
To any Marshal of the United States To
The Deputies of any such Marshal
or Either of Them.

WHEREAS, a complaint has been made on oath under the Treaty between the United States of America and Great Britain, signed at Washington on the Ninth day of August, One Thousand Eight Hundred and Forty-two, the ratifications whereof were exchanged at London on the Thirteenth day of October, in the same year, and a convention supplementary to the said Treaty between the same high contracting parties, concluded at Washington on the Twelfth day of July, One Thousand Eight Hundred and Eighty-nine, the ratifications

whereof were exchanged at London on the Eleventh day of March, One Thousand Eight Hundred and Ninety; and the further convention supplementary to the said Treaty, concluded at Washington on the Thirteenth day of December, One Thousand Nine Hundred, the ratifications whereof were exchanged at Washington on the Twenty-second day of April, One Thousand Nine Hundred and One; and a further convention supplementary to the said Treaty, concluded at London on the Twelfth day of April, One Thousand Nine Hundred and Five, the ratifications whereof were exchanged at Washington on the Twenty-first day of December, One Thousand Nine Hundred and Six, before me, Edwin K. Walker, a commissioner appointed by the District Court of the United States for the Northern District of Illinois, and also a Commissioner especially appointed and authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States, concerning the extradition of fugitives from justice of a foreign government, under a Treaty or convention between this and any foreign government, for the apprehension and delivery up of certain offenders;

That heretofore and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the City of London, England, and within the jurisdiction of his Britan-
41 nic Majesty, one Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sums of Fifteen Thousand Pounds (£15,000) Sterling and Seventy Thousand Pounds (£70,000) Sterling, respectively, knowing the same to have been fraudulently obtained; that heretofore and on or between the 3rd day of October, 1930, and the 27th day of October, 1930, at the aforesaid City of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press Limited, the sum of One Hundred and Thirty-one Thousand Pounds (£131,000) Sterling, as follows:

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On the 16th day of October, 1930, the sum of £20,000,
On the 16th day of October, 1930, the sum of £25,000,
On the 17th day of October, 1930, the sum of £40,000,
On the 27th day of October, 1930, the sum of £6,000,

knowing the same to have been fraudulently obtained: that heretofore and on or between the 14th day of June, 1930, and

the 30th day of September, 1930, at the aforesaid city of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press Limited, the sum of Two Hundred and Forty-two Thousand Five Hundred Pounds (£242,500) Sterling, knowing the same to have been fraudulently obtained;

That the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is a fugitive from the justice of England, Kingdom of Great Britain, and is now within the territory of the United States, and a warrant has been issued at London, England, aforesaid, for the apprehension of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, for the offenses herein charged; and that the crime with which the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is herein charged is an offense within the Treaties between the United States and Great Britain.

NOW, THEREFORE, WE COMMAND YOU FORTHWITH to take said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, and bring him before me, the said Commissioner, at my office
42 in Room ....., Federal Building, city of Chicago, state of Illinois, or before the nearest Justice, Judge or Commissioner in the District in which said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is apprehended, authorized to act in any proceeding for the extradition of fugitives from justice of a foreign government, as provided in Section 5270 of the Revised Statutes of the United States, in order that the evidence of the criminality of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, may be heard and considered and if deemed sufficient to sustain the charge that the same may be certified, together with a copy of the proceedings to the Secretary of State, that a warrant may issue pursuant to the Treaties.

WITNESS MY HAND AND OFFICIAL SEAL this 25th day of May, A. D. 1931.

EDWIN K. WALKER,
United States Commissioner and also a Commissioner especially appointed to execute the provisions of Title LXVI of the Revised Statutes of the United States for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivery up of certain offenders.

Seal

43 *The President of the United States of America To any Marshal of the United States To the Deputies of any such Marshal or Either of Them*

WHEREAS, a complaint has been made on oath under the Treaty between the United States of America and Great Britain, signed at Washington on the Ninth day of August, One Thousand Eight Hundred and Forty-two, the ratifications whereof were exchanged at London on the Thirteenth day of October, in the same year, and a convention supplementary to the said Treaty between the same high contracting parties, concluded at Washington on the Twelfth day of July, One Thousand Eight Hundred and Eighty-nine, the ratifications whereof were exchanged at London on the Eleventh day of March, One Thousand Eight Hundred and Ninety; and the further convention supplementary to the said Treaty, concluded at Washington on the Thirteenth day of December, One Thousand Nine Hundred, the ratifications whereof were exchanged at Washington on the Twenty-second day of April, One Thousand Nine Hundred and One; and a further convention supplementary to the said Treaty, concluded at London on the Twelfth day of April, One Thousand Nine Hundred and Five, the ratifications whereof were exchanged at Washington on the Twenty-first day of December, One Thousand Nine Hundred and Six, and before me, EDWIN K. WALKER, a Commissioner appointed by the District Court of the United States for the Northern District of Illinois, and also a Commissioner especially appointed and authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States, concerning the extradition of fugitives from justice of a foreign government, under a Treaty or convention between this and any foreign government, for the apprehension and delivery up of certain offenders; Dated 1931

That heretofore and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the city of London, England, and within the jurisdiction of his Britannic
44 Majesty, one Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sums of Fifteen Thousand Pounds (£15,000) Sterling and Seventy Thousand Pounds (£70,000) Sterling, respectively, knowing the same to have been fraudulently obtained; that heretofore and on or between the 3rd day of October,

1930, and the 27th day of October, 1930, at the aforesaid city of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press Limited, the sum of One Hundred and Thirty-one Thousand Pounds (£131,000) Sterling, as follows:

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On the 16th day of October, 1930, the sum of £25,000
On the 27th day of October, 1930, the sum of £40,000
On the 27th day of October, 1930, the sum of £6,000,

knowing the same to have been fraudulently obtained; that heretofore and on or between the 14th day of June, 1930, and the 30th day of September, 1930, at the aforesaid city of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from the Broad Street Press Limited, the sum of Two Hundred and Forty-two Thousand Five Hundred Pounds (£242,500) Sterling, knowing the same to have been fraudulently obtained;

That the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is a fugitive from the justice of England, Kingdom of Great Britain, and is now within the territory of the United States, and a warrant has been issued at London, England, aforesaid, for the apprehension of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, for the offenses herein charged; and that the crime with which the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is herein charged is an offense within the Treaties between the United States and Great Britain.

NOW, THEREFORE, WE COMMAND YOU FORTHWITH to take said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, and bring him before me, the said Commissioner, at my office in Room 878 Federal Building, city of Chicago, state of Illinois, or before the nearest Justice, Judge or Commissioner in the District in which said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is apprehended, authorized to act in any proceeding for the extradition of fugitives from justice of a foreign government, as provided in Section 5270 of the Revised Statutes of the United States, in order that the evidence of the criminality of the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, may be heard and considered and if deemed sufficient to sustain the charge that the same may be certified, together with a copy

of the proceedings to the Secretary of State, that a warrant may issue pursuant to the Treaties.

WITNESS MY HAND AND OFFICIAL SEAL this 25th day of May, A. D. 1931. Dated 1931

EDWIN K. WALKER,
United States Commission and also a Commissioner especially appointed to execute the provisions of Title LXVI of the Revised Statutes of the United States for giving effect to certain treaty stipulations between this and foreign governments for the apprehension and delivery up of certain offenders.

46 BEFORE EDWIN K. WALKER, Esq.,
United States Commissioner

In the Matter of the Application for Extradition of Harry Wise alias J. Factor alias Guest alias J. Walker, a fugitive from justice under the Treaty between the United States and Great Britain.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS. } ss.

GODFREY HAGGARD, his Britannic Majesty's Consul General at Chicago, Illinois, being first duly sworn, upon his oath deposes and says that he is informed and believes and thereupon states:

1. That heretofore and on or between the 14th day of July, 1930, and the 26th day of August, 1930, at the city of London, England, and within the jurisdiction of his Britannic Majesty, one Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sums of £15,000 and £70,000 respectively, knowing the same to have been fraudulently obtained;

2. That heretofore and on or between the 3rd day of October, 1930, and the 27th day of October, 1930, at the aforesaid city of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, received from Broad Street Press Limited the sum of £131,000 as follows:

On the 3rd day of October, 1930, the sum of £30,000

On the 14th day of October, 1930, the sum of £10,000
On the 16th day of October, 1930, the sum of £20,000
On the 16th day of October, 1930, the sum of £25,000
On the 17th day of October, 1930, the sum of £40,000
On the 27th day of October, 1930, the sum of £6,000,
knowing the same to have been fraudulently obtained;

3. That heretofore and on or between the 14th day of June, 1930, and the 30th day of September, 1930, at the aforesaid city of London, England, said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, did receive from Broad Street Press Limited the sum of £242,500, knowing the same to have been fraudulently obtained;

47 4. That the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is a fugitive from the justice of England, Kingdom of Great Britain, and is now within the territory of the United States, and a warrant has been issued at London, England, aforesaid for the apprehension of said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, for the offenses herein charged;

5. That the crime with which the said Harry Wise, alias J. Factor, alias Guest, alias J. Walker, is herein charged is an offense within the Treaties between the United States and Great Britain;

6. That the deponent's information and belief are based upon properly certified copies of the warrant of arrest issued in London and of depositions of witnesses received at the British Consulate General, Chicago, from the Secretary of State for Foreign Affairs in London, England, all of which are ready to be produced at the hearing of this cause.

GODFREY HAGGARD,
British Consul General.

Subscribed and sworn to before me this 25 day of May, A. D. 1931.

EDWIN K. WALKER,
United States Commissioner for the Northern District of Illinois, and Commissioner duly authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States, concerning the extradition of fugitives from justice of a foreign government under a treaty or convention between this and any foreign government.

48 Motion of respondent, John Factor, to dismiss complaint, and as reason why said motion should be sustained said defendant assigns the following, to-wit:

1. Said complaint and the allegations therein contained are not sufficient in law to maintain this action against this defendant.

EMBASSY OF THE
UNITED STATES OF AMERICA

[SEAL OF THE
UNITED STATES OF AMERICA]

I, CHARLES G. DAWES, Ambassador Extraordinary and Plenipotentiary of the United States of America in Lon-
49 don, hereby certify that the annexed papers being copies of the Warrant of Arrest, the Informations and Depositions on which the Warrant was granted, proposed to be used upon an application for the extradition from the United States of America of Harry Wise, alias J. Factor, alias Guest, alias J. Walker, charged with the crime of receiving certain monies knowing the same to have been obtained under circumstances which amount to misdemeanour, towit, conspiracy to defraud, contrary to Section 33(1) of the Larceny Act 1916, alleged to have been committed in Great Britain, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of Great Britain, as required by the Act of Congress of August 3, 1882.

CHARLES G. DAWES.

[SEAL
EMBASSY OF THE
UNITES STATES OF AMERICA
LONDON]

London, February 26, 1931.

In forwarding the annexed papers, to be used in support of an application for the surrender from the United
50 States of America of Harry Wise, otherwise J. Factor, otherwise Guest, otherwise J. Walker, charged with the

crime of receiving certain monies knowing the same to have been obtained under circumstances which amount to misdemeanour, to wit, conspiracy to defraud, contrary to Section 33(1) of the Larceny Act, 1916, committed in Great Britain. I hereby certify that, to the best of my knowledge and belief, the signature "W. R. Pryke" certifying to the correctness of the copies of the Warrant of Arrest, the Informations and Depositions on which the Warrant was granted is the signature of Alderman Sir William Robert Pryke, Baronet, one of His Majesty's Justices of the Peace for the City of London, having authority to issue and receive the same, and I further certify that such documents so certified by a Magistrate having jurisdiction in the place where the same were issued and taken, and authenticated by a Minister of State, and sealed with his official seal. would be received in evidence for similar purposes by the tribunals of Great Britain.

E. BLACKWELL,
Assistant Under-Secretary of State for the Home Department.

Whitehall.
24th February, 1931.

{SEAL SECRETARY OF STATE HOME DEPARTMENT}

Certified at the Foreign Office for Legalization of the Foregoing Signature. "E. BLACKWELL."

F. G. A. BUTLER,
Finance Officer of the Foreign Office.

{SEAL FOREIGN OFFICE}

London.
25th Feb. 1931.

CITY OF LONDON, *to wit:*

The Information of The Director of Public Prosecutions and the Deposition of ARTHUR WARD in support thereof
51 taken on oath this 10th day of November, 1930, being supplemental to the Information taken on oath on the
8th day of November 1930, before Alderman Howell at the

Guildhall Justice Room, before me, the undersigned, one of the Aldermen for the City of London, sitting at the Mansion House Justice Room upon an application for a Warrant against Arthur J. Klein for that he on divers days between the 1st day of September 1928 and the 1st day of November, 1930, conspired with ..... Walker, ... Wise, ... Moncrieff, ... Green, ... Guest, and ..... Spellan, and with other persons unknown to defraud such persons as should thereafter be induced to part with money to him the said Arthur J. Klein and the aforesaid persons, trading under the name of the Broad Street Press Limited, by false representations that they were then carrying on a genuine business as Stock and Share Brokers, against the Peace, etc.

And the said ARTHUR WARD on his oath saith:—

(1) I crave leave to refer to the aforesaid Information of the 8th day of November 1930, a copy of which is annexed hereto and is marked "A."

(2) I am informed and verily believe that the said Arthur J. Klein was buying and selling shares on behalf of Broad Street Press Limited. One of the said transactions concerned a block of 320,000 shares in the Asbestos and Holdings Trust Ltd. of the nominal value of 5/- each for an amount representing roughly 1/6 per share which were bought on behalf of Broad Street Press Limited from Asbestos Consolidated Mines of Rhodesia Limited through the agency
52 of one J. Brooks of 14, Copthall Avenue and on the 14th day of March 1930, the Asbestos Consolidated Mines of Rhodesia Limited acknowledged in writing by letter addressed to the said Arthur J. Klein at 14, Copthall Avenue the payment of £1,500 for 20,000 shares part of the above mentioned block of shares. At or about this time Broad Street Press Limited were selling the shares of Asbestos and Holdings Trust Limited to the clients mentioned in paragraph 3 of the Deposition of Cyril Thomas Newman annexed to the Information marked "A." Thereafter the Cash Book of Broad Street Press Limited shews the following payments to the said Arthur J. Klein:—

27th May, 1930,	£ 7,863.
26th June 1930,	£10,000.
30th June 1930,	£ 5,000.

(3) I have made inquiries and believe that the said Arthur J. Klein is a passenger on the S. S. "Olympic" bound for

New York, which is believed to be due to arrive at that Port on Tuesday, the 11th November, 1930.

ARTHUR WARD.

Taken and Sworn before me this 10th November, 1930.

(Sgd) W. R. PRYKE,
Alderman and Justice of the Peace, City of London.

"A"

CITY OF LONDON, *to wit:*

The Information of the Director of Public Prosecutions and the Depositions of CYRIL THOMAS NEWMAN and
53 ARTHUR WARD in support thereof, taken on oath this 8th day of November, 1930, before me the undersigned, one of the Aldermen for the City of London, sitting at the Guildhall Justice Room, upon an application for a Warrant against ..... Walker, ... Wise, ... Moncrieff, ... Green, ... Guest and ..... Spellan, for that they, on divers days between the 1st September 1928 and the 1st November 1930, conspired together and with other persons unknown to defraud such persons as should thereafter be induced to part with money to the said Walker, Wise, Moncrieff, Green, Guest and Spellan, trading under the name of the Broad Street Press Limited, by false representations that they were then carrying on a genuine business as Stock and Share Brokers.

Against the Peace, etc.

And the said CYRIL THOMAS NEWMAN on his oath saith:—

(1) I am an Examiner in the Department of the Official Receiver in Companies Liquidation. I have been enquiring into the affairs of the Broad Street Press Limited, and the facts hereinafter stated have come to my knowledge during the course of such enquiry and are to the best of my knowledge true and capable of proof.

(2) The Company was incorporated as a private Company on the 8th September 1928 with a nominal capital
54 of £5,000 divided into Ordinary Shares of £1 each. Albert Simon Joseph Osborne and Albert Paris were Directors, holding respectively 1,998 shares and 3,000 shares, J. H. Osborne, the Secretary, 1 share, and H. B. Coggins, a signatory,

1 share. I have seen and taken statements from the two Directors Osborne and Paris. They both state that in September 1928 they were introduced—neither can remember by whom—to a Mr. Walker. He asked them if they would like to be Directors of a Company; he did not mention the name. They were to be paid £100 a year, and their duties were to sign cheques or anything else they were told. These interviews were separate and neither Osborne nor Paris were known to each other at the time. On the 12th September 1928 they attended a meeting at the office of Mr. Elman of 27 Lincoln's Inn Fields, who was the solicitor to the Company. The said Walker was present, shares were then allocated, 1,998 to Osborne and 3,000 to Paris. Both say that they never paid anything for these shares. Osborne states that he used to attend at the office at 2 Broad Street Buildings daily for a few months for the purpose of signing cheques. He used to see there the said Walker at times and the said Moncrieff, who was the Manager of the business and paid him his salary weekly. Osborne says that Walker told him he should have £4 a week at first instead of £2, and during the last 18 months he has been receiving £6. He also occasionally attended Board Meeting at the office of Mr. Elman, when Walker sometimes was present, and when he was he did all the talking; at other times only himself, Elman and Paris, but neither he nor Paris took any part whatever in the management of the business or knew anything about it. Paris states that he never attended at 2 Broad Street Buildings at all. Cheques in blank in large numbers were sent to him to sign, and he did sign them and return them to 2 Broad Street Buildings.

(3) The Company published a weekly financial paper which for the first few months was called "The City News and Stock Exchange Observer," of which Osborne was described as Editor, although he says he took no part whatever either in editing or in publishing it. In June 1929 the name of the paper was changed to "Finance and Stock Exchange Observer." It appeared under that name up to the last published edition in October, and the Editor appears in the issue of the 11th September 1929 as "Norman D. Spenser." This, so far as I have been able to discover, is an entirely fictitious name. Up to about March 1930 the Company appears to have advised clients in the buying and selling of reasonably good securities. In March 1930 clients were widely circularised

to the effect that Spenser, who was always on the look-out for shares which he could recommend, was completing his investigations regarding shares which in his opinion were good for considerable capital appreciation; that the shares would shortly be introduced to the London Stock Exchange at about 7s.6d. per share and that he would be making arrangements to secure the shares for clients at 5/- a share; and clients were asked to fill in a form enclosed stating the number of shares they wished to be secured for them. A few days afterwards the clients were informed that the shares were Asbestos Holdings Trusts, Limited, and that they had been purchased for them. Other shares which clients were advised to buy, being told that they were certain to go up very largely in value and that they were perfectly safe and could be well recommended, were shares in the Vulcan Copper Mines Limited and Rhodesia Border Mining Corporation Limited. Large numbers of clients bought shares in these three Companies. A very large number of them had previously bought shares recommended by the Broad Street Press Limited in perfectly sound concerns which had shewn a profit
56 when sold and, therefore, clients were more easily persuaded to invest in the three companies already mentioned. In many cases clients who had bought shares in solid concerns and had been told that they had made a profit refused to buy any further shares and asked for the profit they had made to be sent to them. In spite of this, in numerous cases the Broad Street Press Limited informed them that they had bought shares for them in one or other of the three Companies already mentioned, and they were unable to get any redress. I have received numerous complaints from persons who have bought shares on the strength of the representations of the Broad Street Press Limited and its Agents.

(4) I have, from an inspection of the Company's banking account, discovered that between the 3rd September 1930 and the 16th October 1930 there are payments through the Company's account at Barclays Bank, Bishopsgate, to the said Wise totalling £375,000, and further payments to the said Wise through the Midland Bank, Gray's Inn Branch, totalling £84,000. This money has now all disappeared.

(5) I have been in communication with Messrs. Mullens, Marshall, Steer, Lawford & Co., Government Brokers, who state with regard to the Asbestos Holdings Trust Limited, the

Rhodesia Border Mining Corporation Limited and the
57 Vulcan Copper Mines Limited that there have never been any dealings on the Stock Exchange in the shares in any of these Companies, and that the shares are entirely worthless.

(6) I have found among the Company's papers:—

(*a*) one letter addressed to Jack Factor from Mr. Hermann of Chicago.

(*b*) a few papers referring to Spellan,

(*c*) seven slips addressed to H. Green from Ashford & Co. of Tokenhouse Yard, relating to purchase of shares.

(Sgd.) C. T. NEWMAN.

And the said ARTHUR WARD on his oath saith:—

(1) I am a Detective-Inspector of the City Police and have been making inquiries into this case at the request
58 of the Director of Public Prosecutions. The facts hereinafter mentioned have come to my knowledge during the course of such inquiries and are to the best of my knowledge true and capable of proof.

(2) The premises at 2 Broad Street Buildings consisted of seven offices at a rental of £410 per annum on a seven years lease from the 29th September 1928. The offices originally were leased by the said Wise, who prior to the 29th September 1928 was carrying on the business of the "City News and Stock Exchange Observer." He transferred his lease of the premises to the Broad Street Press Limited in September 1928.

(3) I have seen and taken a statement from a Miss Cunningham, who is employed as a shorthand-typist by the Broad Street Press Limited, on the 5th April of this year. She was engaged by the said Moncrieff, her duties mostly were typing letters, from dictation, to clients about investments in perfectly sound securities. She worked most of her time at 2 Broad Street Place, which is opposite to Broad Street Buildings. She states that she occasionally went over to 2 Broad Street Buildings and that the principals engaged there were the said Moncrieff, the said Green, the said Guest and the said Spellan.

(Sgd) ARTHUR WARD.

41. INDICTABLE OFFENCES.—WARRANT.

CITY OF LONDON, *to wit:*

To each and all of the Constables of the Police Force for the City of London and the Liberties thereof, and to
59 all other Constables and Peace Officers in the said City and Liberties.

Whereas, ARTHUR J. KLEIN (hereinafter called the "Accused") has this day been charged upon Oath before the undersigned one of the Aldermen of the City of London, being one of His Majesty's Justices of the Peace in and for the said City and the Liberties thereof, for that the said Accused, in the said city, on divers days between the 1st day of September 1928 and the 1st day of November 1930 did conspire together with other persons, to wit, ... Walker, ... Moncrief, ... Guest, ... Wise, ... Green, ... Spellan, and with other persons unknown to defraud such persons as should thereafter be induced to part with money to the said ..... Walker, ... Moncrief, ... Guest, ... Wise, ... Green, ... Spellan, trading under the name of the Broad Street Press Limited, by false representations that they were then carrying on a genuine business as Stock and Share Brokers, against the Peace, &c.

There Are Therefore to command you, in His Majesty's name, forthwith to apprehend the said Accused, and to bring him before me, or some other of His Majesty's Justices of the Peace for the said City, at the Guildhall Justice Room in the said City, to answer unto the said Charge, and to be further dealt with according to Law. Herein fail not.

Given under my Hand and Seal this 10th day of November, 1930, at the Mansion House Justice Room aforesaid.

W. R. PRYKE (L. S.)
Alderman & J. P. for the City of London.

CITY OF LONDON, *to wit:*

I the undersigned, one of the Aldermen of the City of London and one of the Justices of the Peace acting in and for the said City, sitting at the Guildhall Justice Room, Hereby Certify that the written and typewritten matter contained in the foregoing nine pages of paper is a true copy of the Information of the Director of Public Prosecutions and the deposition of Arthur Ward in support thereof, laid and sworn before me on the 10th day of November, 1930, and the exhibit marked "A," and of the Warrant issued by me thereon for the apprehension of Arthur J. Klein.

Given under my Hand and Seal at the Guildhall Justice Room aforesaid this 19th day of November, 1930.

W. R. PRYKE,

SEAL
SECRETARY OF STATE
HOME DEPARTMENT

SEAL
ALDERMAN
JUSTICES OF THE PEACE
GUILDHALL JUSTICE ROOM
CITY OF LONDON

EMBASSY OF THE
UNITED STATES OF AMERICA

SEAL OF THE
UNITED STATES OF AMERICA

I, CHARLES G. DAWES, Ambassador Extraordinary and Plenipotentiary of the United States of America in London, England, hereby certify that the annexed papers being copies of the Warrant of Arrest, the Information and Depositions on which the Warrant was granted, proposed to be used in support of an application for the extradition from the United States of America of Harry Wise, alias J. Factor, alias Guest, alias J. Walker, charged with the crime of receiving certain monies knowing the same to have been obtained under circumstances which amount to misdemeanor, to wit, conspiracy to defraud, contrary to Section 33 (1) of

the Larceny Act, 1916, alleged to have been committed in Great Britain are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of Great Britain, as required by the Act of Congress of August 3, 1882.

CHARLES G. DAWES,

SEAL
EMBASSY OF THE
UNITED STATES OF AMERICA
LONDON

London, December 13, 1930.

In forwarding the annexed papers, to be used in support of an application for the surrender from the United
63 States of America of Harry Wise, otherwise J. Factor, otherwise Guest, otherwise J. Walker, charged with the crime of receiving certain monies knowing the same to have been obtained under circumstances which amount to misdemeanour, to wit, conspiracy to defraud, contrary to Section 33(1) of the Larceny Act, 1916, committed in Great Britain, I hereby certify that, to the best of my knowledge and belief, the signature "Isidore N. Jacobs" certifying to the correctness of the copies of the warrant of arrest, the information, and depositions on which the warrant was granted, is the signature of Alderman Isidore Nathan Jacobs, one of His Majesty's Justices of the Peace for the City of London, having authority to issue and receive the same, and I further certify that such documents so certified by a Magistrate having jurisdiction in the place where the same were issued and taken, and authenticated by a Minister of State, and sealed with his official seal, would be received in evidence for similar purposes by the tribunals of Great Britain.

E. BLACKWELL,
Assistant Under-Secretary of State for the Home Department.

Whitehall.
11th December 1930.

SEAL
SECRETARY OF STATE
HOME DEPARTMENT

Certified at the Foreign Office for Legalization of the Foregoing Signature. "E. BLACKWELL"

S. GASELEE,
Librarian and Keeper of the Papers for the Secretary of State for Foreign Affairs.

{ SEAL
{FOREIGN OFFICE}

London.
12th Dec. 1930.

CITY OF LONDON, *to wit:*

The information of The Director of Public Prosecutions and the Depositions of CYRIL THOMAS NEWMAN, WILLIAM JOSEPH WALLIS HILL, GLADYS MARION STACY, JOHN THOMAS HEDLEY, FREDERICK WILLIAM TURNER, FRANK STANLEY COCHRANE, AUGUSTUS YOUNG, ROBERT HENDERSON HAMILTON, BENJAMIN BRYCHAN WILLIAMS, CECIL GATES, ROBERT JAMES TRIVETT, FREDERICK WILLIAM MEMORY, FREDERICK WILLIAM JAN, PHILIP NEVILLE D'ESTERRE TAYLOR, LESLIE WILLIAMS, MARGARET WOOLLENDS, FLORENCE FARNCOMBE, LEONARD VICTOR SHORTLANDS, ERNEST FRANK WEST, JANE CRAWFORD CUNNINGHAM, JAMES RICHARDS FRENCH and CLAUD JAMES MATTHEW GWATKIN in support thereof taken on oath this 10th day of December, 1930, before me, the undersigned, one of the Aldermen of and a Justice of the Peace for the City of London, sitting at the Guildhall Justice Room, upon an application for a Warrant against HARRY WISE, otherwise J. FACTOR, otherwise ..... GUEST, otherwise J. WALKER:

(1) For that he on the 14th day of July 1930 and the 26th day of August 1930, received from the Broad Street Press Limited the sums of £15,000 and £70,000 respectively, knowing the same to have been obtained under circumstances which amount to a misdemeanour, to wit, conspiracy to defraud;

(2) For that he on the 3rd day of October 1930, received the sum of £30,000, on the 14th day of October 1930, received the sum of £10,000, on the 16th day of October 1930, received the sum of £20,000, on the 16th day of

October 1930, received the sum of £25,000, on the 17th
66 day of October 1930, received the sum of £40,000, and on the 27th day of October, 1930, received the sum of £6,000, in each case from the Broad Street Press Limited, knowing the same to have been obtained under circumstances which amount to a misdemeanour, to wit, conspiracy to defraud; and

(3) For that he on divers days between the 14th day of June, 1930 and the 30th day of September, 1930, received the sum of £242,500 from the Broad Street Press Limited, knowing the same to have been obtained under circumstances which amount to a misdemeanour, to wit, conspiracy to defraud:

In each case contrary to Section 33(1) of the Larceny Act, 1916.

And this Deponent CYRIL THOMAS NEWMAN on his oath saith:—

67 I crave leave to refer to an Information sworn by me before Alderman Howell, one of the Aldermen and Justices of the Peace in and for the City of London, sitting at the Guildhall Justice Room, on the 8th day of November 1930, and in addition thereto to say that on the 24th November 1930 an Order of the High Court of Justice was made for the compulsory winding-up of the Company known as Vulcan Copper Mines, Ltd. I have had the conduct of the affairs relating to the winding-up of this Company and from the documents, data and books obtained by the Official Receiver, I find there is no evidence that this Company owned any property in South Africa. The only asset at present known of the Vulcan Copper Mines Limited is cash at Bankers amounting to £28,303. 2. 9 which sum was received by this Company from the Broad Street Press Limited for the acquisition of shares which were later sold to the general public at enhanced prices. I also find from the examination of the books of the Vulcan Copper Mines Limited and of the Broad Street Press Limited that Broad Street Press Ltd. had sold to the public shares which they had acquired from Permanent Investments Ltd. (a Company registered in Guernsey of which Frederick Newbery is one of the two directors, and which company I verily believe is controlled entirely by the said Frederick Newberg) being shares agreed to be allotted to Permanent Investments Ltd. by Vulcan Cop-

per Mines Ltd. as part consideration for the purchase of the properties which the Company purported to possess at the time the shares were sold to the public. The said Frederick Newbery has now been arrested in London and charged with Spellen, Moncrieff and Wise with conspiracy to defraud such persons as should be induced to part with money to the Broad Street Press Ltd. for the purchase of shares in the said Vulcan Copper Mines Ltd., and that during my further in-
68 vestigations of the affairs of the Broad Street Press Limited (in liquidation) I have ascertained that the sums referred to in the first and second charges to this Information were paid by cheques drawn in favour of H. Wise (*i. e.* the said Harry Wise, alias Factor alias Guest alias Walker) upon the banking account of the Broad Street Press Limited at Barclays Bank Limited, 232 to 238, Bishopsgate, London E. C. 2., which sums were in due course credited to the banking account of the said Harry Wise at the North of Scotland Bank Limited, 3 & 4, Lothbury, London E. C. 2., and that the amount referred to in the third charge to this Information was paid by cheque drawn in favour of H. Wise (*i. e.* the said Harry Wise, alias Factor, alias Guest, alias Walker) by cheques upon the banking account of the Broad Street Press Limited at Midland Bank Limited, 49, High Holborn, London W. C. 1. and in due course were credited to the account of the said Harry Wise at the said North of Scotland Bank. The cheques by which these payments were made are now in my possession, photostat copies of which are Exhibit Nos. 4, 5 and 6.

C. T. NEWMAN.

And this Deponent WILLIAM JOSEPH WALLIS HILL on his oath saith:—

I am an Examiner in the Department of the Official Receiver in Companies Liquidation, London; I have been en-
69 quiring into the affairs of the Rhodesia Border Mining Corporation Limited, and the facts hereinafter stated have come to my knowledge from an inspection of the books, papers and other documents of the Company during the course of my enquiry. An Order of the High Court of Justice, in London was made upon the 24th November 1930 for the compulsory winding-up of the Rhodesia Border Mining Corporation Ltd., and, as a result of my investigation of

the books, papers and other documents of the Company, I find that there is no evidence that this Company own any property in South Africa, the only known asset of the Company is cash at bankers (now in the custody of the Official Receiver in Companies Liquidation) amounting to £29,413-18-4 which sum appears from the books of the Rhodesia Border Mining Corporation Ltd to have been received from the Broad Street Press Ltd for the acquisition of shares which shares were later sold to the public at enhanced prices. I also find from a further examination of the books, papers and other documents of the said Corporation and of the Broad Street Press Ltd, whose affairs are also in the hands of the Official Receiver in Companies Liquidation, London, that the Broad Street Press Ltd had sold to the public shares which they had acquired from the Pretoria Mining Estates Company Limited, a Company registered in the Island of Guernsey, of which Frederick Newbery is one of the Directors, which Company I verily believe is conducted entirely by the said Frederick Newbery. These shares were agreed to be allotted to the Pretoria Mining Estates Co. Ltd by the Rhodesia Border Mining Corporation Ltd as part consideration for the purchase of the properties which the latter Company purported to possess at the time the shares were sold to the public, these shares being what are commonly known as "vendor shares", and so far as is known they are worthless. As a result of my further enquiries, I have ascertained that there have never been any dealings on the Stock Exchange of London in the shares of the Rhodesia Border Mining Corporation Ltd. It is within my knowledge that the said Frederick Newbery has now been arrested in London and charged with Spellen, Moncrieff and Wise with conspiracy to defraud such persons as should be induced to part with money to the Broad Street Press Ltd for the purchase of shares in the said Rhodesia Border Mining Corporation Ltd.

W. J. WALLIS HILL.

And this Deponent GLADYS MARION STACY on her oath saith:—

I am married and reside at The Bury, Epping, Essex.

For the past six months I have regularly received, per post, gratis copies of "Finance", a financial journal pub-

lished by the Broad Street Press Ltd., 2, Broad Street Buildings, London, E. C.

Sometime early in July, 1930, I received a letter—since destroyed—signed by Norman D. Spencer, the Editor of "Finance" as above, in which he suggested that I buy
71 "Swears & Wells" ordinary shares, as they then stood at 15/-, and were likely to rise, and without any further communication from him, I instructed him to purchase £300 worth of the said shares, which he did.

On or about 30th July 1930, I received a letter, in which Norman D. Spencer stated that "Swears & Wells" ordinary shares stood at 19/- and would certainly go higher, and he also referred to a Rhodesia Copper Share of 10/- par value, which would shortly be introduced on the London Stock Exchange at a price of not less than 15/-.

On the 31st July 1930, I received the prepaid telegram signed "Finance", and which stated that "Swears & Wells" were then worth 21/- each, and advising me to sell my holding—400—take what profit I had made, and re-invest my original capital (£300) in Rhodesia Border Mining Corporation, Ltd., at 10/- each. I immediately replied giving instructions to re-invest as suggested after selling my holding of "Swears & Wells." I later received the Contract Note which shows that the 400 "Swears & Wells" ordinary realized £420 O. O, and on or about the 15th August, 1930, I received a letter together with a Statement of Account and a cheque for £119. 5. 6 which represented my profit on the deal. This cheque was signed by "A. S. J. Osborn" and "A. Paris", but I do not remember what Bank it was drawn upon.

I later received another Contract Note, but as I felt
72 uneasy I wrote to Norman D. Spencer, asking him to supply me with particulars of the Company in which I had invested my money, and in reply I received a letter which stated that there was no need for my uneasiness.

On or about 15th August, 1930, I received a letter in which Spencer stated that a group of financiers were endeavoring to obtain control of "Rhodesia Border Mining Corporation Ltd.," and were offering 15/- per share, and impressing upon me not to sell my holding under any circumstances, as I later may receive £2 per share.

On the 20th August, 1930, Spencer phoned me and said he had secured an option upon 2,000 "Rhodesia Borders"

A. No about the profits all going to Gerber's, no matter where the customer bought.

With respect to the testimony of the witness Abraham Aaron:

(95) Q. What did the proprietor of the market say?

A. He said I can't give you poultry.

(96) Q. He said that?

A. I said "Why don't you want to give me poultry?" and he said "When I give it to somebody else poultry, to other butchers, not his butchers, the union sends me in a man; I have to pay for that—he sends in an extra man; that is why I can't give you poultry."

With respect to the testimony of the witness Israel M. Lerner:

(97) Q. In that capacity have you ever conducted investigations of combinations among the poultry marketmen of Greater New York?

A. I have.

(98) Q. What were the names of the organizations that you investigated?

A. One was a corporation then known as the Commu- [fol. 166] nity Live Poultry Corporation and another the Square Deal Live Poultry Corporation and, if my memory serves me right, I think there was a third by the name of The Square Deal Corporation, and also the Commission merchants at West Washington Market.

(99) Q. At what time did you investigate the Community Live Poultry Corporation?

A. If you will let me—I believe it was sometime in the year 1925 or 1926. My records that I brought will give it.

(100) Q. Who were the members of the Live Poultry Corporation, the Community Live Poultry Corporation, what class of people?

A. I know of my own knowledge that the persons who were interested in the Community Live Poultry Corporation were owners of slaughterhouses.

(101) Q. In what section of the city?

A. I believe they operated in the territory known as Williamsburg, in the Borough of Brooklyn, City of New York.

(102) Q. Could you estimate the percentage of markets in Williamsburg who were members of the Community Live Poultry Corporation?

A. I should say about 95 to 98 per cent.

(103) Q. What other practices besides price fixing did you investigate?

A. I investigated complaints that some of the slaughterhouse people who finally found themselves as members of the Community Live Poultry Corporation that they were intimidated and forced to give up their individual places of business conducted by them as slaughterhouses, turn their places of business over to the Community Poultry Corporation, become one of its managers and known as a branch number under threat of not being able to get any poultry from the producers or the commission marchants at West Washington Market.

(104) —. Were there any other practices that you investigated in connection with the Community Live Poultry Organization?

A. I investigated a complaint that the organizers of the Community Live Poultry Corporation had made an arrangement with the commission merchants of West Washington Market whereby it was understood that no poultry should be sold to any marketman or rather any slaughterhouse man in the vicinity unless he was a member of the Community Live Poultry Corporation, and I investigated several complaints whose names are in the minutes, and I have the minutes here of those—I had a talk with the members of the Community Live Poultry Corporation and with the commission merchants and inquired from the commission merchants why they had refused to sell poultry to some of the slaughterhouse keepers—after I went into this investigation quite thoroughly, after several meetings, I commenced an action in the Supreme Court of Kings County to dissolve the corporation known as the Community Live Poultry Corporation on the ground that they are—on the ground that it was a price fixing combination and in violation of the Donnelly Act, and the action came on for trial before Mr. Justice Callahan and a jury on certain questions. The result was a verdict dissolving the corporation on the ground that the corporation was a corporation in restraint of trade and on the ground that it was a price fixing combination.

[fol. 167] (105) Q. What percentage of the slaughter-house markets of Brownsville would you say were members of the Square Deal?

A. Probably 88% or 89%.

(106) Q. Had you received complaints against the commission men prior to your investigation?

A. I did.

(107) Q. What complaints had you received?

A. Well, all commission merchants were charging the same price and very frequently premiums were fixed on poultry which were no better than the other and if they did not want to pay the premiums, you couldn't get the poultry, particularly when there was a shortage.

(108) Q. What evils did you investigate there; what practices did you investigate?

A. I investigated the practice of fixing prices for all poultry without competition.

(109) Q. What were the practices?

A. The practices of creating a superficial shortage of poultry in order to boost prices and increase premiums on poultry.

With respect to the testimony of the witness Rubay:

(110) Q. What did Mr. Seewald say to you?

A. He told me—he put up a price, I bought the poultry and he put up a price. He never put me no price on poultry because I used to pay quotation price.

With respect to the testimony of Jacob Miller:

(111) Q. Do you know what that association is?

A. That is a combination of—they all have one head, they should charge one price and how to rule the business.

(112) Q. Do you know who the members of that association are?

A. Bronx and Harlem Live Poultry Dealers.

(113) Q. Have any of the defendants in this case told you anything about this association?

A. Not the defendants only.

With respect to the testimony of the witness Kalman Gordon:

(114) Q. Can you tell us what it says?

A. Yes.

(115) Q. How did you get this photograph?

A. Before I made a photograph of it.

(116) Q. Just what did the workman say?

A. The workman came over to the market where I fired him, he came over to it where I fired him.

[fol. 168] With respect to the testimony of the witness Benjamin Shair:

(117) Q. Why were you charging the high prices in September and October in 1931?

A. In September and October we charged the high prices because in September that was a holiday week and I did charge him a little more because it is a holiday week, and I got big expenses, and I got to get more for my poultry to cover my expenses.

III. The Court erred in refusing to allow counsel for the defendants to ask the following questions of the witness Abraham Feivelson, over counsel's exceptions duly taken thereto:

(1) Q. Did Rosenfeld, Benjamin Rosenfeld of 80 Jefferson Street sign the paper that you have in your hand?

(2) Q. Was there a hearing and discharge——

(3) Q. Did your rabbinical board give a decision at that time?

(4) Q. Did representatives of the Schochtim Union sign that paper?

(5) Q. Was that paper written by you?

(6) Q. Did Mr. Rosenfeld submit a dispute that he then had with a schochet of the Schochtim Union for decision by the rabbinical board?

(7) Q. Can you translate that paper you have in your hand into English?

(8) Q. You say the time he came to you was in either September or October, 1926?

(9) Q. Do you recall what the dispute was between Benjamin Rosenfeld and Schochet Possman at that time that you sent that letter to the Schochtim Union, do you recall that?

(10) Q. Was the dispute between Possman and Rosenfeld submitted to the rabbinical board for decision?

(11) Q. Was any question with respect to the kind of business that Benjamin Rosenfeld conducted in his market ever submitted to the rabbinical board in 1926?

IV. The Court erred in making the following Findings of Fact:

(1) "1. The Greater New York Live Poultry Chamber of Commerce, hereinafter referred to as the Chamber of Commerce, is an association of poultry marketmen doing business in the Metropolitan Area, comprising the City of [fol. 169] New York and those portions of the State of New York and New Jersey situated within thirty miles of the boundaries of the City of New York."

(2) "2. Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, hereinafter referred to as Teamsters' Union, is a labor union comprising workmen engaged in handling, crating, and loading live poultry at West Washington Market and the New York Central Railroad Terminal, and trucking such poultry from the railroad terminals and West Washington Market to the various poultry markets of the Metropolitan Area. Defendants Arthur Herbert and Harry Schomer are delegates, and David Kaufman is business representative of the Teamsters' Union."

(3) "6. Defendants Max Keslin, Morris Markman (alias "Nigger"), Julius Rosenstein, Murray Rosenstein, Sidney Rosenstein, Aaron Weissler, Meyer Weiss, Charles Gershowitz, Abe Newman, Carl Fireston, Jacob (Joe) Mast, Michael Lax, Sam Lipkin, John J. Conlin and Hyman Fishman were employed by the Chamber of Commerce and by defendant marketmen and union delegates to enforce the agreement to allocate customers in the several districts."

(4) "8. It was agreed and understood by defendants that the money collected was to be used: (a) to pay small marketmen and poultry dealers weekly sums in return for their promise to refrain from engaging in a wholesale business, that is, selling poultry to butchers and dealers; (b) to maintain and enforce a system of allocating customers (retail dealers and butchers) among the various marketman, by hiring men to spy upon, report, threaten, and obstruct marketmen, retail dealers, and butchers who did not abide by the allocation agreement; (c) to prevent retail dealers and butchers from purchasing at sources other than the markets to whom they were allocated, by hiring men to spy upon and obstruct such dealers and butchers and by pay-

ing money to marketmen in return for their promises to refuse to sell to butchers and dealers; (d) to prevent marketmen from selling to retail dealers and butchers not allocated to them; (e) to prevent recalcitrant marketmen, poultry dealers, or butchers from obtaining poultry in West Washington Market, at the railroad terminals in New York and New Jersey, or at any sources whatever, either within or without the State of New York; and (f) to bribe public officials charged with the enforcement of anti-trust laws."

(5) "11. Marketmen were told to advance their prices, and were occasionally told by leaders of the respective districts what price to charge. The prices were advanced materially from June, 1927 until August, 1928. Whereas marketmen had charged 3¢ and 4¢ per pound above the prices which they paid to receivers before June, 1927, they thereafter concertedly charged 6¢, 8¢, 10¢ and as much as 15¢ and 18¢ above the prices which they paid to receivers."

(6) "13. The collections aggregated approximately $1,000,000 per year and continued for more than one year, commencing in June, 1927, and lasting until at least August 20, 1928, when a criminal information was filed against 64 individuals, 4 associations, and one corporation, 52 of whom are defendants in the present case. The sums collected in the several districts were several times as large [fol. 170] as the amount paid to Benjamin Simon. Large sums of the fund collected were used to buy the competition of small marketmen and poultry dealers, who agreed not to sell to retail poultry dealers and butchers. Such payments to small marketmen ranged from $50 to $250 per week. Substantially all of the defendant marketmen were either paying money to the collectors or receiving payments from them. The payments to marketmen aggregated many thousands of dollars per week."

(7) "15. The plan to allocate customers, collect 1¢ per pound, raise prices, and prevent recalcitrant marketmen, poultry dealers, and butchers from obtaining poultry from West Washington Market, the railroad terminals and other points outside the City of New York was carried out by defendants."

(8) "21. When the success of the conspiracy was threatened by importations of poultry from Philadelphia and other distant cities, marketmen and drivers of interstate

truck loads were threatened by defendant union delegates and marketmen with violence unless they discontinued. The president of the Chamber of Commerce accompanied a delegate of the Chauffeurs' Union to Philadelphia and ordered a poultry commissionman there not to ship poultry to New York marketmen without the Union's consent."

(9) "22. When retail dealers, driven by extortionate prices charged them, attempted to buy in New Jersey, they were followed and spied upon by defendants employed for that purpose, and in some instances forceably brought back to the marketmen to whom they had been allocated. New Jersey marketmen who persisted in selling them were cut off from their supplies of poultry in West Washington Market, New York."

(10) "26. The Chamber of Commerce, the Teamsters' Union and the Schochtim Union have all continued in existence up to the time of the filing of the amended petition, April 16, 1390, and thereafter."

(11) "27. The conspiracy described in the amended petition continued in existence up to the time of filing the amended petition April 16, 1930, and for at least eleven months thereafter."

(12) "28. In June, 1929, the defendant marketmen of the East Side organized the L. W. Credit Association for the purpose of restricting competitive sales, allocating poultry dealers and butchers among them, raising prices, and restraining free competition in the sale of live poultry. So-called "watchers" or "chargers" were placed by the L. W. Credit Association in the several markets of the East Side District. Said "watchers", in pursuance of the plan to allocate customers and advance prices recorded the weight of the poultry sold by the marketmen to each poultry dealer and butchers, and transmitted said reports to the L. W. Credit Association. The several marketmen of the East Side were allotted a specific quota of sales per week. For every pound of poultry sold in excess of the quota each marketman was required to pay 4¢ a pound to the L. W. Credit Association; for each pound under his quota for a particular week, each marketman was entitled to receive [fol. 171] 4¢ a pound from the L. W. Credit Association. For the purpose of coercing adherence to the L. W. Credit Association, delegates of the Teamsters' Union required

one marketman to hire additional union employees, until he had "straightened out" with the Association. An East Side poultry dealer was prevented by an officer of the L. W. Credit Association from purchasing poultry in Brooklyn. The L. W. Credit Association continued in existence until a few weeks before the commencement of the criminal trial under indictment No. C. 61-824, in October, 1929."

(13) "29. In February, March, April and May, 1930, Aaron Steinberg was prevented by defendants from purchasing and obtaining delivery of poultry from marketmen in New York, from receivers in West Washington Market, from receivers at the New York Central Terminal, and New Jersey terminals, from Philadelphia, from Elizabeth, N. J., and from Lincoln, Nebr. Delegates of the Teamsters' Union and of the Shochtim Union attempted to coerce Steinberg to employ more union men than his business warranted and prevented others from selling and delivering poultry to Steinberg in interstate commerce. As part of their plan to prevent Steinberg from obtaining poultry in interstate commerce, defendants threatened and assaulted Steinberg's employees, caused the destruction of his poultry truck, and prevented the National Box Company of Newark, N. J., from delivering empty coops for the transportation of poultry in interstate commerce to Steinberg's market. Defendant marketmen cooperated with the delegates of the Teamsters' Union and the Shochtim Union to prevent Steinberg from obtaining poultry. The activities of defendants with relation to Aaron Steinberg in February, March, April and May of 1930 constituted a continuance of the conspiracy described in the amended petition and a threat of future violations of the Sherman Antitrust Act on the part of defendants."

(14) "30. Barney Hecht was prevented by defendants from obtaining poultry from receivers in West Washington Market in July, 1930. He was prevented by defendants from obtaining poultry at the New York Central Terminal in March, 1929, and in Newark, N. J. in March, 1929."

(15) "31. In March, 1931, marketmen in Passaic, N. J. were prevented from obtaining poultry from receivers in Newark, N. J., because they had sold at prices approximately 4¢ above the price paid to receivers, whereas com-

peting marketmen were charging 10¢ or 12¢ above the price charged by the receivers; and were warned by defendant Max Keslin in March, 1931, that they would be unable to obtain poultry in West Washington Market if they sold to a designated person."

(16) "32. Alexander Pearlman and Abraham Pearlman, marketmen, were prevented by defendants from obtaining poultry at the New York Central Terminal and at West Washington Market in December, 1929."

(17) "33. Marketmen were required in 1931 by delegates of the Teamsters' Union and of the Shochtim Union to employ more workmen than their business warranted. Members of the Teamsters' Union and of the Shochtim Union forbade marketmen to sell wholesale."

[fol. 172] (18) "35. From September 19, 1931 to some time in November, 1931, when publicity was given to the fact that an injunction suit against defendants would commence on November 16, 1931, butchers, in Coney Island, Borough Park, Bensonhurst, Bronx, and Harlem, were concertedly charged by marketmen in said districts prices in excess of the prices which had been charged prior to September 19, 1931. Prior to said date butchers paid marketment 3, 4 and 5¢ above the prices which the marketmen paid to the receivers. After September 19, 1931, butchers were charged 8 to 12¢ above the prices paid by marketmen to receivers. During said period of time marketmen in said districts refused to sell butchers who had been dealing with other marketmen. In at least one instance defendant marketmen agreed upon high prices to be charged on the succeeding day. During said period of time marketmen in said districts frequently told butchers that they could not sell them because of a combination or agreement among the marketmen. Marketmen with whom butchers had been regularly dealing, frequently told the butchers that if they bought elsewhere, the profits would revert back to the regular marketmen."

(19) "36. Defendants sold only reluctantly to butchers who had not been dealing with them regularly, and admitted that they would be given trouble by the labor unions and by other marketmen if they were discovered selling to such butchers. Members of the labor unions interfered with such sales to butchers. Marketmen in said districts

were accused by butchers of overcharging, and in repeated instances gave rebates of 1, 2 and 3¢ a pound to partially offset the high prices charged."

(20) "37. In August, 1931, the Live Poultry Slaughter House Association, comprising most of the poultry marketmen of the Metropolitan Area, was formed to succeed the Live Poultry Protective Dealers Association, which comprised a great number of retail marketmen and a smaller number of wholesale marketmen. The Live Poultry Slaughter House Association realizes an income from the same source as the Chamber of Commerce, namely, the assignment of 10¢ on each empty coop returned by marketmen to Bernstein & Sons and the New Jersey Coop Company, which corporations supply coops for the trucking of poultry from the railroad terminals to the various markets in the Metropolitan Area. Some of defendant marketmen who are members of the Live Poultry Slaughter House Association have manifested a disposition to use the Association as an instrumentality for continuing the conspiracy described in the amended petition."

(21) "38. The Harlem and Bronx Live Poultry Board of Trade, organized in the fall of 1931, comprised most of the marketmen doing business in Harlem and Bronx. The members agreed not to sell on credit to poultry dealers and butchers who did not produce receipted bills showing full payment to marketmen with whom said poultry dealers and butchers had last dealt. By the custom of the trade poultry dealers and butchers pay their bills only once each week, paying on Monday morning for all poultry bought during the previous week. Poultry dealers and butchers, under the restrictions imposed by the Harlem and Bronx Live Poultry Board of Trade, were not to be permitted to change marketmen during the middle of the week unless they paid cash or produced a receipted bill showing full payment to the marketmen with whom they had last dealt. After the formation of the Harlem and Bronx Live Poultry Board of [fol. 173] Trade, the marketmen of the Bronx charged prices in excess of those charged before the formation of said association. One marketman was prevented from obtaining poultry in West Washington Market because he resigned from the Harlem and Bronx Live Poultry Board of Trade:"

(22) "39. At the time of the filing of the original petition, February 7, 1930; at the time of filing of the amended petition, April 16, 1930; and up to the time of the trial of this case, there has been a continuous and dangerous probability of resumption of all of the acts, purposes, means and methods described in the amended petition."

(23) "40. The presumption of continuance of the conspiracy and of the participation of the various defendants therein has not been rebutted."

(24) "41. Each of the allegations in the amended petition has been proved by the Government."

V. The Court erred in making the following Conclusions of Law:

(1) "(1) This Court has jurisdiction over the cause herein and over each of the defendants."

(2) "(2) Poultry shipped into New York City remains in interstate commerce until sold and delivered by receivers to marketmen."

(3) "(3) All of the defendants herein, except Jacob Damsky and Sam Silverman, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," (26 Stat. 209), commonly known as the Sherman Antitrust Act, entered into and engaged in a conspiracy to restrain and monopolize, attempted to monopolize, and did restrain and monopolize the interstate trade and commerce in live poultry in the Southern District of New York, in the Metropolitan Area, and among the several States from which poultry is shipped into New York City. In pursuance of said conspiracy, said defendants and others restrained and monopolized the intrastate trade and commerce in live and freshly slaughtered poultry, in the Metropolitan Area, by the means and methods described in the amended petition."

(4) "(4) The conspiracy commenced in June, 1927, and continued up to and beyond the time of filing the amended petition, April 16, 1930; and all of the defendants except Jacob Damsky and Sam Silverman continued to participate in said conspiracy during said period of time."

(5) "(5) A dangerous probability of future violations of said Act of Congress and of resumption of all of the acts, means, methods, and purposes set forth in the amended petition, by defendants now exists, and has existed continuously at all times since June, 1927."

(6) "(6) The petitioner is entitled to an effective injunction restraining not only the conspiracy and monopoly alleged and similar conspiracies and monopolies but also [fol. 174] restraining individually each of the overt acts, means, methods and purposes set forth in the amended petition and any other acts which have a tendency to recreate the conspiracy or monopoly alleged, or any similar conspiracy or monopoly."

VI. The Court erred in admitting in evidence in behalf of the petitioner-respondent, over objection and exception duly taken by counsel for defendants-appellants, the following papers and documents:

(1) Exhibit No. 5, consisting of Indictment No. C 61-824, in the criminal case entitled United States of America v. Greater New York Live Poultry Chamber of Commerce, et al.

(2) Exhibit No. 7, consisting of Record on Appeal to the Circuit Court of Appeals, in the criminal case entitled United States of America v. Greater New York Live Poultry Chamber of Commerce, et al., No. C-621-824.

(3) Exhibit No. 11, consisting of statement purporting to show amount of payments made by Bernstein & Son and New Jersey Coop Company to the Chamber of Commerce.

(4) Exhibit No. 18, consisting of purported photograph of the witness Aaron Steinberg's truck.

(5) Exhibit No. 19, consisting of purported photograph of the engine and motor of the witness Aaron Steinberg's truck.

(6) Exhibit No. 20, consisting of purported photograph of the engine and motor of the witness Aaron Steinberg's truck.

(7) Exhibit No. 21, consisting of sheets in small note book bearing hand written entries allegedly in handwriting

of the defendant Louis Weidberg, showing items of collection and disbursements.

(8) Exhibit No. 23, consisting of the judgment roll in the criminal case entitled United States of America v. Greater New York Live Poultry Chamber of Commerce, et al., C 61-824.

(9) Exhibit No. 24, consisting of a list of the members of the Chamber of Commerce, poultry markets, who made assignments of ten cents a coop to the Greater New York Live Poultry Chamber of Commerce, for the period commencing January 7, 1929, up to January 6, 1930.

(10) Exhibit No. 25, consisting of a list of the amounts of the payments made from week to week by the New Jersey Coop Company and Bernstein & Sons, Inc., covering the period from November 18, 1926, to and including January 9, 1930.

[fol. 175] (11) Exhibit No. 26, consisting of a list of the persons who made assignments of ten cents per coop owing from the New Jersey Coop Company and Bernstein & Sons to the Live Poultry Dealers Protective Association for the period commencing November 15, 1930, and ending November 16, 1931.

(12) Exhibit No. 27, consisting of list of persons who made assignments to the Live Poultry Dealers Protective Association for the period from November 16, 1928, until November 15, 1929.

(13) Exhibit No. 28, consisting of list purporting to contain amounts of the payments from week to week by members of the Live Poultry Dealers Protective Association of New York and vicinity to that association by virtue of the assignments of ten cents a coop owing from the New Jersey Coop Company and Bernstein & Sons, covering the period from December 3, 1928, to and including September 10, 1931.

(14) Exhibit No. 29, consisting of a list of the markets with their addresses, which made assignments of ten cents a coop owing from the New Jersey Coop Company and Bernstein & Sons to the Live Poultry Slaughter House Association for the period of one year commencing September 8, 1931, to September 7, 1932.

(15) Exhibit No. 30, consisting of statement purporting to represent the total amounts of the weekly payments of the ten cents per coop to the Live Poultry Slaughter House Association by Bernstein & Sons, Inc., and New Jersey Coop Company, covering the period from September 17, 1931, to and including November 19, 1931.

(16) Exhibit No. 32, consisting of list of markets classified according to the various districts of the city who made assignments of ten cents per coop owing from the New Jersey Coop Company and Bernstein & Sons to the Greater New York Live Poultry Chamber of Commerce for the period from November 16, 1926, to and including November 15, 1928.

(17) Exhibit No. 33, consisting of a list of the markets who made assignments of ten cents a coop owing from the New Jersey Coop Company and Bernstein & Sons to the Live Poultry Dealers Protective Association of New York and vicinity for the period commencing November 16, 1928, and ending November 15, 1929.

(18) Exhibit No. 46, consisting of petition and order dated January 26, 1926, for leave to commence action against Community Live Poultry Corporation, in a proceeding in the Supreme Court, Kings County, brought by Albert Ottinger, Attorney General of the State of New York, against Community Live Poultry Corporation.

(19) Exhibit No. 47, consisting of certified copy of Judgment Roll in an action brought in the Supreme Court, Kings County, by The People of the State of New York, as plaintiff, against Community Live Poultry Corporation, as defendant.

[fol. 176] (20) Exhibit No. 50, consisting of Final Judgment and Consent to the Entry thereof, in an action brought in the Supreme Court, Kings County, by The People of the State of New York, as plaintiff, against Square Deal Poultry Corporation, as defendant.

(21) Exhibit No. 51, consisting of a piece of paper having writing thereon in Yiddish, addressed to "Mr. Goodnick", signed by "Jacob Blum".

VII. The Court erred in refusing to admit in evidence in behalf of the defendants-appellants, to which exception was duly taken by counsel, the following papers and documents:

(1) Exhibit No. Z, for identification, consisting of petition and papers, all briefs that were filed and submitted in connection with the defendants' motion to dismiss the petition herein.

(2) Exhibit No. A-1, for identification, consisting of Notice of Motion to dismiss the original petition herein, made returnable on April 4, 1930.

(3) Exhibit No. B-1, for identification, consisting of order entered on motion to dismiss the original petition herein, dated April 6, 1930.

(4) Exhibit No. C-1, for identification, consisting of Petitioner's brief, dated April 4th, 1930, submitted to the Court in opposition to the motion to dismiss the original petition herein.

(5) Exhibit No. D-1, for identification, consisting of Defendants' brief, submitted to the Court in support of the motion to dismiss the original petition herein.

VIII. The Court erred in granting the decree herein and in enjoining the defendants, as follows:

"6. That defendants, in violation of said Act of Congress, conspired to restrain and monopolize, attempted to monopolize, and did monopolize, interstate trade and commerce in live poultry within the Southern District of New York and in the Metropolitan Area, by the following means among others: allocating and assigning retail dealers and butchers to the several marketmen; requiring retail dealers and butchers to purchase poultry exclusively from the respective marketmen to whom they were allocated, and preventing said retail dealers and butchers from purchasing or obtaining poultry from any other source either within the State of New York or in other States; requiring all market men doing business in the Metropolitan Area to abide by said system of allocation, and preventing said marketmen from selling to retail dealers and butchers other than those allocated to them; boycotting marketmen and retail dealers who did not abide by all of the terms of the conspiracy, and

[fol. 177] preventing them from purchasing poultry from the receivers in West Washington Market, at the railroad terminals in New York and New Jersey, in States other than New York and New Jersey, or from any source whatever; preventing receivers and marketmen from selling or delivering poultry to marketmen and retail dealers who had been boycotted as aforesaid; preventing marketmen, retail dealers and butchers who owed money for prior purchases, from purchasing, selling, loading, unloading, trucking, conveying, slaughtering, handling, or delivering poultry at any place either within or without the State of New York; causing strikes and preventing members of Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, and of the Official Orthodox Poultry Slaughterers of America, Inc., from loading, unloading, trucking, conveying, slaughtering, handling, delivering, or selling poultry for marketmen, retail dealers, or butchers who did not abide by all of the terms of the conspiracy; fixing and maintaining oppressive prices to be charged to retail dealers and butchers; dictating retail prices to be charged by retail dealers and butchers; collecting from marketmen large sums of money generally computed at approximately 1¢ per pound, on all poultry sold by them, and dispensing said money among themselves, to retail dealers, and to persons employed to carry out the objects of the conspiracy; and employing other violent, oppressive, and coercive methods in the enforcement of said conspiracy;

"7. That defendants, their officers, agents, servants, employes, and all persons acting under, through, by, or in behalf of them or any of them, or claiming so to act, be and hereby are, perpetually enjoined, restrained, and prohibited (a) from doing any of the acts set forth in paragraph 6 herein, and (b) from forming, joining, aiding, entering into, or participating in any combination or conspiracy having any of the purposes, objects, or effects, or employing any of the means or methods, described in paragraph 6 herein, or having any of the purposes, objects or effects, or employing any of the means or methods described in the amended petition;

"8. That each of the defendants, their officers, agents, servants, employes, and all persons acting under, through,

by, or in behalf of them or any of them, or claiming so to act, be, and hereby are, perpetually enjoined, restrained, and prohibited—

(a) from aiding, serving, or participating in any association, combination, or membership corporation of marketmen, receivers, retail dealers, and/or butchers, which has among its objects or effects: allocation of retail dealers, butchers, or others, among marketmen; fixing or enhancement of prices paid to marketmen, retail dealers, or butchers; boycotting of marketmen, receivers, retail dealers, or butchers; elimination of competition in the sale or distribution of live poultry; establishment of any system whereby marketmen agree to act in concert to prevent any retail dealer, butcher, or marketmen from purchasing or obtaining delivery of poultry from any source within or without the State of New York, whereby retail dealers and butchers are prevented from engaging in the wholesale business, or marketmen prevented from engaging in the [fol. 178] retail business; refusing to sell for cash to retail dealers, butchers, or marketmen, who have not paid their bills to persons or corporations other than the one concerned in the proposed purchase; agreeing or acting in concert with each other or others to fix prices to be paid to receivers;

(b) from attempting to create, or creating in the poultry industry of the Metropolitan Area or in the minds of any persons engaged therein, a feeling of fear and terror for the purpose of preventing said persons from buying, selling, or distributing live poultry in a free, open and competitive market;

(c) from detaining, destroying, or damaging vehicles, or other equipment used in conveying live poultry within, into, or through the State of New York, to or from marketmen, retail dealers, butchers, or receivers;

(d) from refusing, or instigating refusals, to load, unload, convey, deliver, slaughter, or handle poultry for any receiver, marketman, retail dealer, or butcher, wherever the rendition of such service under reasonable conditions shall be requested and the one requesting the service shall pay, or offer and be ready, able and willing to pay or

cause to be paid, therefor the fair and reasonable value thereof;

(e) from coercing receivers, marketmen, retail dealers, or butchers, or any persons, firms, or corporations engaged in the live poultry business in the Metropolitan Area to make payments or contributions to any cooperative plan, association, credit organization, or any mutual association of marketmen, receivers, retail dealers and/or butchers whatsoever;

(f) from employing any threats, boycotts, violence, or coercive devices for the purpose of enforcing the payment of any contributions or tribute from marketmen, receivers, retail dealers, or butchers, to any organization, association, corporation, or combination in the poultry industry of the Metropolitan Area; or for the purpose of inducing or compelling any marketman, receiver, retail dealer, or butcher to join, cooperate with, or abide by the rules, policies, or demands of any association, corporation, or other combination in the poultry industry of the Metropolitan Area;

(g) from causing or coercing any marketman to employ laborers in excess of his reasonable requirements, whether such coercion is effected under the guise of labor union regulations or otherwise;

(h) from following or spying upon marketmen, retail dealers, or butchers, or their representatives, employes, or truck drivers, for the purpose of ascertaining the source of their poultry supplies, or intimidating them;

(i) from paying any money or other consideration to [fol. 179] marketmen or retail dealers for the purpose of effecting a discontinuance or lessening of their wholesale business;

(j) from employing any device or doing any act having the purpose, effect, or tendency of recreating the conspiracy, diminishing or eliminating competition in the live poultry industry, or enhancing or fixing prices;

(k) from restraining the freedom of any marketman, receiver, retail dealer or butcher in any way in purchasing, loading, unloading, trucking, conveying, delivering, slaughtering, selling, or competing in the purchase and/or sale of poultry;

(l) from using any of the offices or positions in Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers of America, or in the Official Orthodox Poultry Slaughterers of America, Inc., or in similar organizations, for the purpose of coercing marketmen to buy poultry, poultry feed, or other commodities necessary to the poultry business, from any particular sellers thereof."

IX. The Court erred in granting the motion of the petitioner-respondent for an interlocutory order striking out as sham certain denials in answers filed by the defendants herein who were convicted in the criminal prosecution heretofore had in this Court, which said interlocutory order was entered upon the direction of District Judge John M. Woolsey, and bears date October 30, 1931.

X. The Court erred in denying the defendants-appellants' motion to dismiss the amended petition herein, on the ground that the same fails to state facts sufficient to constitute a cause of action, to which denial exception was duly taken by counsel.

XI. The Court erred in denying the defendants-appellants' motion to dismiss the amended petition herein, on the ground that the evidence does not support the allegations contained therein, to which denial exception was duly taken by counsel.

[fol. 180] XII. The Court erred in denying the defendants-appellants' motion to strike out all the testimony and exhibits relating to the L. W. Credit Association, the Harlem & Bronx Board of Trade, the Live Poultry Dealers Protective Association and the Live Poultry Slaughter House Association, on the ground that they were shown to be separate enterprises whose activities related to intrastate commerce only, without being connected in any way with the conspiracy alleged in the amended petition herein, or with any overt act charged as having been done in pursuance or furtherance of said alleged conspiracy, to which denial exception was duly taken by counsel.

XIII. The Court erred in denying the defendants-appellants' motion to strike out all the testimony relating to alleged interferences with the sale and delivery of poultry by marketmen to retailers in New York, on the ground that

such alleged interferences affected and related to intrastate commerce exclusively, and were not shown to have been committed in pursuance or furtherance of any conspiracy to restrain interstate commerce, to which denial exception was duly taken by counsel.

XIV. The Court erred in denying the defendants-appellants' motion to strike out all the testimony and exhibits relating to conversations and transactions had between witnesses not parties to this action with other persons not parties to this action, on the ground that such conversations and transactions were not shown to have related to any conspiracy in restraint of interstate commerce, or that they were in pursuance or furtherance of the conspiracy alleged in the amended petition and that they were not shown to have been made or done by parties to this action, to which denial exception was duly taken by counsel.

[fol. 181] XV. The Court erred in denying the defendants-appellants' motion to strike out all the testimony and exhibits relating to alleged interferences, transactions, and all enterprises, in which any of the defendants may have been engaged after August, 1928, and/or since the beginning of 1929, on the ground that none of the testimony or exhibits tends to prove the existence or continuation of the conspiracy alleged in the amended petition since August, 1928, to which denial exception was duly taken by counsel.

Wherefore defendants-appellants pray that the said decree may be reversed, and for such other and further relief as to the Court may seem just and proper.

Dated New York, April 4, 1932.

Samuel H. Kaufman, Nathan D. Perlman, Attorneys for Defendants-Appellants.

[fols. 182-184] Bond on appeal for $250.00, approved and filed April 6, 1932, omitted in printing.

[fol. 185] IN UNITED STATES DISTRICT COURT

In Equity. No. 52-30

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed Feb. 15, 1933

It is hereby stipulated by and between counsel for the respective parties hereto, that the transcript of the Record on Appeal herein shall consist of the Petition and Order Allowing the Appeal and severing the action; the Citation; Appeal Bond; Assignments of Error; Amended Petition; Answer to Amended Petition; Motion to strike out portions of said Answer and the papers in support thereof; Order striking out portions of said Answer; Opinion of the Court on said Motion; Opinion of the Court delivered at the end of the trial; Findings of Fact and Conclusions of Law; Final Decree; Supplemental Opinion of the Court in support of Final Decree; the Statement of Evidence as settled and approved; and the following statement of facts: that the Original Petition filed in this cause on February 7, 1930, was, on motion duly made, dismissed for want of equity by an order duly entered on April 6th, 1930, with leave to file an amended petition within ten days from the entry of said order; that the Amended Petition herein was duly filed and served on April 16, 1930; that said Amended Petition contains all of the allegations of the Original Petition, plus the additional allegations embodied in para-[fol. 186] graphs numbered (27), (28), (29), (30) and (31) thereof and in all other respects is identical with the original petition, which statement of facts shall be in lieu of the said original petition, the motion papers and said order entered on April 6, 1930, dismissing said original petition; also that on June 2, 1930, a motion was duly made for an order dismissing the Amended Petition herein, or directing the petitioner to reframe the same and to make it more definite and certain upon the following grounds:

(1) That said amended petition consists for the most part, of allegations of redundant and impertinent matter relating to intra-state commerce;

(2) That said amended petition is vague, indefinite, prolix, inconsistent and uncertain, and contains many arguments and many conclusions, and does not allege ultimate

facts, by reason whereof, said amended petition violates Clause 3 of Equity Rule #25;

(3) That said amended petition purports to allege several distinct conspiracies and several causes of action, which are so intermingled and confusing as to prevent the proper joinder of issue by the above named defendants;

(4) The said amended petition does not state facts sufficient to constitute a cause of action under the provisions of the Act of Congress of July 2nd, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209) commonly known as the Sherman Anti-Trust Act;

(5) That said amended petition is duplicitous;

(6) That said amended petition, on its fact, shows want of equity,

and that an order was made and entered herein on July 1, 1930, denying said motion in all respects without written opinion, which said statement of facts so stipulated shall be in lieu of said motion papers and order.

[fol. 187] It is further stipulated and agreed that the term of the District Court for the Southern District of New York and the time for the return of the Citation, duly issued and served herein, and for docketing the case and filing the Record on Appeal in the office of the Clerk of the Supreme Court of the United States, was duly enlarged and extended by appropriate orders made and filed herein, to and including the 1st day of March, 1933.

It is further stipulated and agreed that the Clerk of the District Court for the Southern District of New York may certify the foregoing as the transcript of the record in the above entitled cause for use on the appeal herein to the Supreme Court of the United States.

Dated Feb. 10, 1933.

George Z. Medalie, United States Attorney, per W. L. R., Solicitor for Petitioner. Samuel H. Kaufman, Solicitor for Defendants Except Rosenman. Nathan D. Perlman, Solicitor for Defendant Rosenman.

So ordered 2/14/33.

Francis G. Caffey, U. S. D. J.

[fols. 188–190] Citation, in usual form, showing service on George Z. Medalie, filed April 7, 1932, omitted in printing.

[fol. 191] IN UNITED STATES DISTRICT COURT

E 52-30

[Title omitted]

ORDER EXTENDING TIME—Feb. 27, 1933

Upon consideration of the annexed petition, and good cause having been shown therefor, it is hereby

Ordered that the time within which the appellants herein may docket this case and file the record on appeal herein with the Clerk of the United States Supreme Court be and the same hereby is enlarged unto the 10th day of March, 1933.

Francis G. Caffey, U. S. D. J.

Consented to.

George Z. Medalie, U. S. Atty.

[fol. 192] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR ORDER EXTENDING TIME—Filed Feb. 28, 1933

To the Honorable Francis G. Caffey, District Judge:

The petition of the solicitors for the appellants in the above-entitled action respectfully shows unto your Honor:

1. That your Honor has granted to the defendants hereinafter named, leave to appeal to the United States Supreme Court from the decree entered herein on February 6th, 1932.

2. That pursuant to an order of your Honor the time of the appellants to file the record on appeal with the Clerk of the United States Supreme Court has been extended to and including the 28th day of February, 1933.

3. That the certified record on appeal herein has been forwarded to the Clerk of the Supreme Court of the United States for docketing, but it has become necessary to recall the same from the Clerk's office so that certain additions may be made thereto. It will then also be necessary to amend the copy of the record on file in this Court, and procure a recertification of the record as thus amended.

[fol. 193] 4. The attorney for the Government has this day consented over the telephone to the enlargement of the appellants' time to file the record on appeal herein until March 15th, 1933, and is today writing a letter to that effect to Samuel H. Kaufman, one of your petitioners.

5. Your petitioners therefore pray that this Honorable Court enlarge the time of the appellants for filing the record on appeal herein with the Clerk of the United States Supreme Court until March 15th, 1933, the said order of enlargement to be filed with the said Clerk of the United States Supreme Court.

Dated New York, February 25, 1933.

Samuel H. Kaufman, Solicitor for Defendants-Appellants Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, Carl Firestone, Charles Gershowitz, Morris Markman, Abe Newman, Official Orthodox Poultry Slaughterers of America, Inc., Harry Schomer, Charles Herbert, Harry Herbert, David Kaufman, Max Keslin, Samuel Silverman, Joseph Weiner, Aaron Weissler and Arthur Herbert. Office & Post Office address: 60 Wall Street, Borough of Manhattan, City of New York. Nathan D. Perlman, Solicitor for Defendant-Appellant Joseph Rosenman. Office & Post Office address: 475 Fifth Avenue, Borough of Manhattan, City of New York.

[fol. 194] [File endorsement omitted.]

Notice of settlement waived.

George Z. Medalie, U. S. Atty.

9—6

[fol. 195] IN UNITED STATES DISTRICT COURT

Equity. No. 52-30

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled matter as agreed on by the parties.

Dated February 15, 1933.

George Z. Medalie, per W. L. R., Solicitor for Petitioner. Samuel H. Kaufman, Solicitor for all Defendants Except Defendant Rosenman. Nathan D. Perlman, Solicitor for Defendant Rosenman.

[fols. 196 & 197] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 198] IN UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff,

vs.

GREATER NEW YORK LIVE POULTRY CHAMBER OF COMMERCE et al., Defendants

Statement of Evidence

Before Honorable Francis G. Caffey, District Judge

Be it remembered that the above-entitled cause came on for trial on the 16th day of November, 1931, before Hon. Francis G. Caffey, United States District Judge, holding an Equity Term of the District Court for the Southern District of New York, and the following proceedings were had:

APPEARANCES

George Z. Medalie, United States Attorney, Solicitor for Plaintiff. Walter L. Rice and Albert J. Law, Special Assistants to the Attorney General, Counsel.

Goldstein & Goldstein and Joseph F. Kroppy, Solicitors for Certain Defendants. Joseph F. Kroppy, Counsel.

Kaufman & Weitzner, Solicitors for Certain Defendants. Samuel H. Kaufman and Leo L. Fenbert, Counsel.

Sol H. Eisler, Solicitor and Counsel for Defendant Arthur Herbert.

Breed, Abbott & Morgan, Solicitors for Defendant Ole Salthe. Bernard A. Kozicke and Gerald J. Craugh, Counsel.

Blau, Perlman & Polakoff, Solicitors for Defendant Joseph Rosenman, Secretary of the Official Orthodox Poultry Slaughterers of America, Inc. Nathan D. Perlman and Moses Polakoff, Counsel.

[fol. 199] Sam Davis, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

I am a retailer of live poultry in Jersey City, New Jersey. I sold to Samuel Bernklau and Isidore Mosner, who are butchers in Coney Island, New York. They came to my market in Jersey City and purchased poultry. That was about two years ago; about October, 1927. Sometime they called for it and sometime I sent it over. If they called, they called with their own trucks. Sam Bernklau bought poultry from me around three or four months; mostly every day. Substantially all of his supply of poultry came from me. Some days he used to come and some days I used to deliver but most of the days he would come for it because he had his own machine. As to Harry Finkelstein, I delivered to him, with my own truck. I sold to Harry Finkelstein about the same time; it might be a week or two later. In Coney Island, I sold to four or five people, but I do not recall their names. I sold to butchers in Brooklyn, but they used to come down with the truck and used to pay cash for it, but I never inquired about the names. When I bought my stuff the first time, I bought on the railroad, and, of course, I didn't have any trouble and then after I bought,

later on, about three or four weeks later on, they wouldn't sell me stuff, they wouldn't load for me any stuff.

Q. When these people came to purchase poultry, what did they say to you?

A. You mean the butchers?

Q. Yes. Mr. Bernklau, Mr. Finkelstein, Mr. Mosner and the others.

Mr. Eisler: I object, your Honor, on the ground that it is incompetent and not binding on any defendants; what somebody said to him in the absence of any of those defendants. [fol. 200] Mr. Rice: If your Honor please, I would like to be heard.

The Court: Over-ruled.

Mr. Kaufman: Exception.

* * * * * * *

The Court: I am not going to consider all this testimony as to what people told him as establishing what they said as being true, not at all.

Mr. Perlman: I quite agree with your Honor.

The Court: But I have the right and I think it proper to take into account in determining what the state of mind was as to what conversations occurred and the Court of Appeals in the identical case has already ruled on that.

The Witness: When Sam Bernklau came to purchase poultry from me in October 1927 and thereafter, he asked me if I am willing to sell him poultry at such and such a price and if I do it, why, he will bring me some more customers. So I agreed with him on the price and he kept coming to my place and he fetched people along with him and the next time again, the other people came themselves until they all came around. The entire group was in the sale of this stuff when I sold at such a price, because they say they have got to pay $.10, $.12 or $.15 in the wholesale markets of Coney Island on stuff and I sold them $.05 a pound above the wholesale market quotations; they gave no other reason. I had been selling to Mr. Bernklau, Finkelstein, Mosner, and those other butchers and retail dealers in Coney Island and Brooklyn. I had difficulty in purchasing poultry myself. They wouldn't sell me any poultry because I am selling to the people—They wouldn't load me. I refer to the commission men in West Washing-

ton Market. There were no commission men in New Jersey. All the poultry that comes into New Jersey belongs to New York commission men and they handle the New Jersey. I can't recollect the day when it was or the week. [fol. 201] I went down to West Washington Market to load some stuff. That was Wednesday, when it was I don't know. I had my stuff stand on the sidewalk and I wanted to load it and go home. Over in Jersey they would not load me any stuff. They would not load me in Jersey any stuff so I had to send my stuff down to West Washington Market and from down there I went to load my wagon with stuff and they wouldn't let me load in the wagon. They said "Davis, you can't load." I said "What is the reason I can't load?" They say "You got to get a book from Jersey." Well, I asked a fellow by the name of "Tootsie"; I asked him and he said to me "Get the Hell out of here where you belong in Jersey. Get a book and come back here and get your stuff." So, of course, I couldn't get the stuff; I went back to Jersey and back in the union there in the union office, and they wanted $200 to give me a book and I told them I am not going to give you $200. They said "Well, we will make it for $100. We will give you a book for $100." Well, I was in business, I can't close my business up, so I say "I haven't got any hundred dollars." I said "I will give you $50; I will have to get it in the office in New York from the Castle Poultry Company and I will give it to the man who wouldn't let me load." So he said "That will be all right. I will call him up and let you load, give me $50 and the other $50 you will pay up at $10 a week." So I went up there; they charged $2.50 for the book; I don't know what it is, and I got the book. So I gave him $52.50 and he said "All right, you can load." So they loaded me and I went home. That was after they would not load me and after I gave the business up. They wouldn't load me stuff in Jersey for the wholesaler and then I had to give my wholesale up. They wouldn't sell me any stuff in Jersey, they wouldn't load me on the Erie [fol. 202] and Delaware. So I told him all right "I know where the chicken grows. You needn't tell me where I need to get my stuff". So I went and bought in Newark for a few weeks stuff and then after they called me up by the telephone they will stop me, they will take my permit away, they will go to the Health Department, so I asked

him this way. He said it cost me a cent extra to pay. So since that time I gave the wholesale business up. They wouldn't let me do it.

About three or four months after I commenced selling to these Coney Island butchers, I had trouble in West Washington Market, because then I have to have a book. This man I referred to as "Tootsie"; I really don't know; there are two brothers and anyway, they look all three alike. I think this is the man here.

(The witness identifies Charles Herbert.)

I wanted to load up four crates of chickens. Charles Herbert wouldn't load me, so the commission man said "Go over to 'Tootsie' and ask him, tell him to load you up," and I asked him to load me up and he said "Get the Hell out of here. Get back where you belong to Jersey." Charles Herbert said that. So, of course, I couldn't get them loaded up and I went away with my wagon. Charlie Herbert didn't say anything to me about selling to Coney Island butchers. The one who told me about selling wholesale was from Hoboken, New Jersey, John J. Conlin. I think he is a delegate of a labor union which functions in New Jersey. He told me through the telephone that if I won't stop selling Coney Island stuff, Brooklyn stuff, he is going to take my permit away; he is going to make me some trouble.

[fol. 203] Mr. Perlman: Is this offered as against defendants here? I object as incompetent, irrelevant and immaterial.

The Court: Objection over-ruled.

Mr. Perlman: I respectfully except.

The Witness: Well, that is what he told me; if I sell Coney Island or Brooklyn butchers he will go to the Health Department and make trouble for me and take my permit away and put me out of business. You have got to have a permit you know for a live poultry market. He didn't say anything else. At about this time I attempted to buy poultry from all of them at the Delaware, Erie and Pennsylvania yards in New Jersey. When I come to the market, of course they all knew me. I am an old timer. When I come in the railroad the man who takes the weights said: "Sam Davis, you can't get your stuff here, you can't get

any stuff on the Erie. Go home." I said "All right, don't make no noise. I will get some stuff. If you don't sell me, I will get some stuff." And then I went to Newark to get some stuff. The commission men would sell to me but the union men wouldn't load it for me. After I was refused poultry at the Erie, Pennsylvania and Delaware terminals, I went down to West Washington Market and I saw a party by the name of Harry Rosenstein and he sold me a lot of stuff, and we were there at midnight, that I got it, and after this I couldn't get any more there because it didn't pay me; so since that time I didn't get the stuff any more. In Newark I bought it. None of them at West Washington Market refused to sell. Rosenstein had some special men to load the truck over there that midnight. Prior to 1927 I did not sell poultry to butchers in Coney Island and Brooklyn. The last time I sold them was late in December 1927, 1928 two years ago.

[fol. 204] John J. Conlin told me I should stop selling stuff in Brooklyn and in Coney Island and if I wouldn't stop selling stuff in Coney Island and Brooklyn, he will make me some trouble; he will get my permit away, he will go to the Health Department and he will make me lots of trouble, etc. He said "If you don't stop selling these Coney Island and Brooklyn people some poultry, I will put you out of business. He told me to keep away from Coney Island and Brooklyn—selling stuff. I did not have any further conversations with Charles Herbert.

I attended a meeting at which those attending it spoke about collecting one cent a pound. That was in Jersey. They wanted to make you charge a cent a pound more for the stuff to make an association. Conlin was there and four or five delegates. He sent me a little card I should come to the meeting such and such a day. We went there; we had a meeting of about 12 to 15 poultry dealers and they said they are going to charge us a cent a pound for our stuff and make an association. Some of them wouldn't listen to them and some of them went down to the market, they couldn't get no stuff. Well, I couldn't get any stuff. After I got stuff they made me pay them a cent a pound. I got a thousand pounds of stuff I bought, I gave $10. The following week I had 880 pounds and I gave $8.80. I did not pay Conlin. He sent one of the men down to my place of business. There was a fellow, I think a big fellow; he

used to come and collect the money in the office. After that when I paid that and then that was after this they gave us a ticket. When we gave them the cent they gave us a ticket so we can go down to the market and get stuff loaded in our market. I went to Washington Market once and they [fol. 205] wouldn't load the chickens. I said "What is the matter? I got a ticket here." And they said this week I don't get no stuff. They said "We don't want tickets no more. You got to bring a union book." This meeting at which they discussed the one cent per pound collection took place about two weeks after I started selling them, about September 1, 1927. The 15 marketmen that were present at this meeting were Italian men. All in Hoboken and Jersey City, New Jersey. I don't know them. I only know a man named Morland who was present at this meeting. He is from Jersey City, but the balance was all from Hoboken, all Italian people. Most of the marketmen present were from Hoboken, and some of them were from Jersey City. I see them now and then pretty often, but I don't come in business with them because they are downtown and I am uptown. All these other men who were there I at some time would see in West Washington Market, and sometimes in the railroad terminals in Jersey City, and in Hoboken. I don't know who was chairman of the meeting. I am connected with the chauffeurs' and loaders' union of Jersey City, of which John J. Conlin is the delegate.

The chairman of the meeting said they should make a combination and each one of them should pay a cent a pound like they used to pay in New York and to make a whole association about it and we will be all in it and, of course, we didn't agree with that.

Then the Chairman said they wouldn't sell any stuff unless we pay a cent a pound to that association on every pound of poultry that the marketman buys from the railroad. Well, we didn't want to pay, and, of course, we couldn't get any stuff, so we went that week without stuff.

Whatever the marketmen buys from the railroad, whether a thousand or five thousand or ten thousand pounds, he has got to get a penny on every pound. There was nothing [fol. 206] said at this meeting about dividing up customers. They did say they will keep the price. If some will sell a little less than the others, they wouldn't get no stuff.

They all got to sell on the same price, the same prices as they say, thirty one cents or thirty-five cents a pound;

everybody got to sell at thirty five cents a pound, and if someone would sell at a little less than that, they wouldn't get any stuff. They said a cent a pound, and they fixed it up everybody should keep the same price and everybody should get the stuff and they will look out for them and if everybody don't sell at the same price, they won't load no stuff for them, and of course, we wouldn't stand for it. That was Tuesday night. On Wednesday we went for stuff and they wouldn't load me and I went back Wednesday and I told them I will get my stuff and I will give you a cent a pound and give me my stuff. So after they loaded me, there was a thousand pounds I had and I gave them $10 after I refused to pay the one cent a pound. I tried to buy poultry in Hoboken on the Delaware railroad from the Castle Poultry Company. I could get the stuff but the union loaders wouldn't load me. They wouldn't say anything. They said "We can't load for you", that is all. None of the Union men would load for me. I went back to the office and told them "I will give you a cent on a pound; they should let me have the poultry; so they loaded it. They wouldn't let me get loaded in New York.

Charles Herbert told me to go down to the union office in Jersey City. That was when I attempted to purchase at Washington Market. There was a man sitting by the desk, a tall fellow, and I told him about it. I told him I went down for stuff and they wouldn't let me load, I said: "What is the reason; I didn't owe you anything"; they said, "You got to have a book, and they won't load you [fol. 207] with a ticket, you got to take a book and the book will cost you $200". I says "Why do I need a union book, I am a dealer. I am not a working man, I am a marketman, and I don't need to be connected with the union men." Before that time, no one asked me to join the union. Someone in Conlin's office told me I needed a union book. I told him I would not pay $200; I couldn't pay $200. He said: "We will make you $100". I don't know what was the usual fee for joining the union.

A man came around to my market and collected $10 one week for 1,000 pounds that I sold and $8.80 the next week for 880 pounds that I sold. Two fellows with a machine. I don't know them. I know them in the market but I don't know their names. I told them I haven't got $100; I told them I would give them $50 and give them $10 a week to

pay off the balance. They telephoned they sould load me when I got the $50, so I went upstairs to the office and gave him $52.50; that was supposed to be dues for the book, so then he said: "All right, boys, load him; he is all right. $102.50 I paid to the same people. I paid $28.80 before I got the book. I paid $102.50 altogether. I had to pay him when I got the book. When I went to New York I had to have the book. When I didn't show the book they wouldn't give me no stuff. Charles Herbert once told me to get the hell out of West Washington Market. They wouldn't load me unless I had the book. When I am in two days they came in and collected $10. After I paid this $10 twice, they did not collect any more. I paid $28.80 before I got the book; $52.50 the day I got the book, and then I paid twice $10 a week and that is all I ever paid on account of this book. I paid that $28.80 as one cent per pound on the poultry I sold.

[fol. 208] Mr. Rice: I offer in evidence Exhibit 8 for identification.

The Court: Any objection?

Mr. Kroppy: I object to it as incompetent, irrelevant and immaterial. It does not tend to prove any conspiracy, as charged in the petition and does not connect any of the defendants with any of the things to which the witness has testified. At this time I would like to make a formal objection. I have waited for some testimony to connect the defendants whom I represent to any of the acts and I have heard none and I move at this time to strike out all his testimony. I also object on the ground that none of his testimony tends to prove the conspiracy to restrain interstate commerce as alleged in the petition or any conspiracy in restraint of interstate commerce in live poultry.

The Court: Motion denied.

Mr. Kroppy: Exception.

Mr. Kaufman: I join in the same objection.

The Court: Same ruling.

Mr. Kaufman: Exception.

[fol. 209] Cross-examination.

By Mr. Kroppy:

Witness: I have not had any trouble or any difficulty in either buying or selling poultry since December, 1927, or

December, 1928. I am still in the business of buying and selling poultry, and since December, 1928, I can go to Washington Market, and to the terminals in Jersey City, and buy all I want. Nobody interferes with me, and I don't have to pay any money in order to buy it.

[fol. 210] SAMUEL GOLDSTEIN, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I have been a commission merchant since 1928. In 1927 and 1928 and 1929 I had a retail market and a commission business. Before 1928 I was, for a couple of years, in the commission business but I still had slaughterhouses. I was a marketman, who sells poultry to butchers. I was a partner in Goldstein & Siegel in 1927.

I attended a meeting of Bronx marketmen in the summer of 1927, at the Bronx Casino. I should say maybe 15 or 20 or 25 were present. Only the market people from the Bronx were there. The next meeting was before Benjamin Simon became Supervisor of the Chamber of Commerce. I attended very little those meetings after that. I believe I did attend some meetings of Bronx marketmen after Benjamin Simon became supervisor. Those who were present at this meeting at the Bronx Casino were Mr. Bell of the 156th Street Live Poultry Company, Abe Bloom, Julius Dolobovsky, Isidore Frank, Meyer Friedlander, Gross of the Zion Market, Sam Friedman, Louis Goldburg, Murray Siegel, my partner, K. Gross, Jaffee from the Tremont Live Poultry Company, Sam Manne and Joe Manne, Hyman Raby, Rosenbaum of the Webster Live Poultry Company, Slabagd of the Sliver & Castine Poultry Company, Louis Spatz, Max Sokoloff, of Sokoloff & Siegel, Aaron Steinberg, I. Winkler, of Winkler & Diamond. The man that presided at that meeting was Max Sokoloff; he is dead. He proposed that we who were there present have our own terminals for receiving the poultry from out west. The only thing that I remember that was said is to build the business in good

shape and we got to have money for that, that is as far as I can remember.

[fol. 211] I was a witness for the Government, but not a defendant, in the criminal prosecution.

Q. Was anything said about not interfering with each other's customers?

A. Well, exactly, I don't remember, but I think it was said where we should pay a cent a pound in on our poultry.

Q. Who said that?

A. The chairman.

Q. Who was the chairman?

A. Max Sokoloff.

Mr. Kroppy: If your Honor please, may I make an objection at this time to this line of testimony on the ground that the interfering with the customers of these men who were present, who were marketmen, relates to their own business, selling by marketmen to retail dealers. It is intrastate business and anything that was discussed at that meeting, concerning that trade or concerning interference with that trade, is absolutely immaterial and irrelevant to this case.

The Court: Overruled.

Mr. Kroppy: Exception.

The Witness: The chairman brought up at the meeting, that if we want to have a business, we need money. How can we get money? We should all agree to pay a cent a pound for each pound of poultry we bought, not what we sold. All of the members present discussed it. Some of them said we shouldn't and some of them said we should until we all came to an agreement that we should pay a cent a pound. Every person present at that meeting said he would pay a cent a pound. It was said at that meeting that the money should be used to build our own terminals. The old man Sokoloff brought that up. Now, some of that money should be distributed to some small retailers that they did not do any wholesale business for the purposes—because they could not make a living from their retail business alone. What they did—if we should pay to him a cent a pound to the pool for reserve, then we had to charge a cent a pound more for our merchandise when we sold it and if we wouldn't pay that something to the retailers where

they should make a living they would go out and cut prices [fol. 212] and sell cheaper and we were trying to prevent that which we did. We were trying to prevent the retailer from selling cheaper.

Mr. Kroppy: May I make the same objection and have the same exception to this witness's testimony?

The Court: Certainly.

Mr. Perlman: It is difficult for every counsel to be jumping up. I thought I might say this that I have a general objection to every bit of testimony of everyone not in the presence of my client, on the theory it does not bind my client at all. Your Honor overruled that objection to the testimony and I have my exception.

The Court: Sometimes I would and sometimes I would not.

Mr. Perlman: Then I have my objection and exception to this witness's testimony up to the present time as far as my client is concerned.

The Court: You object to it?

Mr. Perlman: I certainly do.

The Court: Overruled.

Mr. Perlman: Exception.

The Witness: One cent a pound was collected from the market men in the Bronx, by Louis Spatz; for a couple of weeks I collected myself. The collections started a few days after the meeting that I spoke of in the summer of 1927. Whenever anybody didn't pay then Jacob Mast used to go out and get it for me. The regular collector for that one cent per pound was Louis Spatz. We had a meeting, and a couple more came to me and claimed where Louis Spatz is collecting too much money, and he don't turn in all the money, whatever he collected. Then we agreed at the meeting I should go out myself and collect a couple of weeks and see how much money comes in, and I did. I believe he must have collected from about 18 or [fol. 213] 20 people. There were about 30 market men in the Bronx, maybe more. The total amount of the collections was about $2,000, $2,500 a week. I think it was said at that time that the retailers should put up $300, and the wholesalers should put up $500 security. I don't remember who held that money; I believe that money was held by Hyman Raby, Max Sokoloff and Isidore Frank. The whole-

salers put up $500 apiece as security for the payment of the one cent a pound. I was an expection; I didn't give it in. I told Max Sokoloff, the chairman, I have no money. I will pay out anyhow. I didn't pay exactly one cent a pound, because I stole on them more than I paid; I couldn't afford to pay a cent a pound. When I took in 50,000 pounds poultry, I show them duplicate tickets for 20,000. I, as a commission man, sent in my poultry from the car in my place, and instead of showing him the right ticket, I showed a ticket with a few thousand pounds less, to give a cent a pound less. I paid one cent a pound on the amount that I reported. Some weeks about $200; some weeks, $150; some weeks, $175. At the meeting the way I understood that cent was collected to pay out part of the money to the small retail markets selling to women only and not to the butcher trade, and part of the money was supposed to go to Benny Simon.

We paid the retailers to keep out of the wholesale trade, because we were thinking if we will start to take a cent a pound more from the customers they will start to interfere in the business. We give them a few dollars a week to make a living, and not interfere. This arrangement was made by Max Sokoloff, the chairman, with every retailer. What he told them, I don't know. He reported at the meeting where to go and so has got to get $25 a week, or so and so has to get $30 a week. Of this money, $900 or $1,000 [fol. 214] was to go to Benjamin Simon, as the contribution of the Bronx marketmen. It was stated in the meeting that every Borough has got to pay that office. I mean Harlem, the East Side, Brownsville Borough Park, Williamsburg and Coney Island. Louis Spatz reported that he did turn in the money to Benjamin Simon. Bronx Borough was the biggest payer. Some time it was not paid; some time the one cent a pound was not paid by the members either; they skipped, and we didn't get any money. I drove around to the various markets with Louis Spatz on several occasions. I saw Aaron Steinberg give Spatz $100 once in Steinberg's office, for the collection. Steinberg did not object to paying the $100, and I never heard him object to paying the one cent a pound. Some weeks I think Louis Spatz used to report he collected about $100, $125, $150 from the Monroe Poultry Market.

Jacob Mast is a bookkeeper. At that time he used to check up on the amount of poultry handled by each marketman by examining their purchase tickets. He reported the amount which each marketman handled to Louis Spatz. If Spatz found that I handled 20,000 pounds he was supposed to collect $200 from me—that is one cent a pound. His duty was to figure up the tickets in each market, get the weights of the poultry, and give them over to Louis Spatz, who used to go out and collect the money. The tickets for the poultry were due to come in from West Washington Market to the slaughterhouses and he just took the weights off. He did not report to anybody else than Louis Spatz. Max Sokoloff arranged for Mast to do that in the summer of 1927 at a meeting.

Bloom Brothers paid $200 or $250 or maybe $300 some [fol. 215] weeks to Spatz for the one cent per pound collections. Morris Bloom paid me twice, around $200. I turned it over to Louis Spatz. He did not give me a receipt. R. S. G. Company paid a small amount. Max Sokoloff paid as much as he wanted because he was the Chairman. I heard at the meetings that he paid $100, $125 and $150 a week. Harry Schoenzeit paid $150, $100, $125 a week. Max Rosen was supposed to pay $300, according to what Spatz said at the meetings. Webster Live Poultry Co. paid $125 or $150. I collected from them once—$140 or $150, based on one cent a pound. They sold 14,000 or 15,000 pounds. Jacob Turkowitz of F. G. T. Poultry Co. was supposed to pay $250 or $225 according to how much poultry he took in. Spatz reported at the meetings that Slabogd and Kastein paid about $25, and that I. Winkler of Winkler & Diamond paid about $100 a week, and that Isadore Frank paid $100 to $200 a week. Spatz reported that Hornstein & Spatz paid sometimes $200, $225, and $300, and that Manne Brothers paid $50, $60 to $75 sometimes. My firm of Goldstein & Gross paid $100, some weeks $150. I don't believe I paid $300 a week. I tried not to.

Q. Were the total collections in the Bronx ever more than $2,500 per week?

A. Something around like that.

Q. Were they ever as much as $3,000 per week?

Mr. Kaufman: I object to that on the ground it is immaterial.

The Court: Overruled.
Mr. Kaufman: Exception.

The Witness: I couldn't say it exactly. I don't believe they ever exceeded to $3,000.
[fol. 216] That is what I think. I don't know; maybe some weeks when there was a big collection, I couldn't say. I told you before what was done with that money. That money was supposed to go, some of it, to the retailer, and about $900 or a $1,000 a week, I don't remember, Louis Spatz used to say he had to give Benjamin Simon. I don't know that Kalman Shapiro was paid any money by the Bronx market men. I never heard that Spatz paid him any money.

Mr. Rice: Kalman Shapiro is not a defendant in this proceeding.

The Witness: Kalman Shapiro is a shochet. He did not have any office in the shochtim union, that I know of. I never had anything to do with the Shochtim Union.

Q. Did you testify at the criminal proceeding that Louis Spatz told you that he paid $75 a week to Kalmon Shapiro?
A. Maybe I did; I don't remember it now.

Mr. Rice: May I ask for the privilege of reading his testimony on this point, to refresh his recollection, if possible.
Mr. Perlman: I object to that, on the ground that Kalman Shapiro was not a party to this case or a defendant here. Further, on the ground that the witness has definitely stated that there was no such conversation, making that as a definite statement, his recollection need not now be refreshed and cannot be refreshed.
The Court: Overruled. Proceed.
Mr. Perlman: Further on the ground that the witness is being impeached by the Government.
The Court: Proceed. He is an adverse witness, and being examined as such.
Mr. Perlman: Is he an adverse witness?
The Court: Yes, proceed.
Mr. Perlman: I respectfully except.

The Witness: I remember after hearing you read my testimony in the criminal trial that Louis Spatz told us he has got to give to Shapiro $75 a week. I asked him why that

[fol. 217] $75 — coming to him, and he said, every borough is giving him $75 a week, Shapiro should do whatever he is asked to do.

Q. Did Spatz say that the purpose of this was to make the Shochtim Union do whatever the market men wanted him to do?

A. So what?

Q. Did he say that the Shochtim Union was to do what the market men demanded?

Mr. Kroppy: I object to that. He has already testified that the money was paid to Shapiro to have him do what the market men wanted him to do. He is trying to contradict him again about that statement.

The Court: Overruled.

Mr. Kroppy: Exception.

The Witness: I don't remember that unless you can read it to me.

Q. Well, do you remember Sam Gold paid on behalf of the Brooklyn market men?

A. I don't remember.

Q. Do you remember whether Spatz said anything to that effect?

Mr. Kaufman: I object to what Spatz said.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: He said every Borough paid it. If he paid him or not. I know he took money for it. If he said every Borough paid there must be one that paid too. I never saw Sahn pay any. All I heard is from Louis Spatz, what he said. I remember when Louis Spatz did tell me that Sam Gold pays $75 a week for Borough Park, and Sam Sahn pays for Brooklyn $75 a week. He said some one else paid for four boroughs, Bronx, Harlem, Brooklyn and East New York. Spatz said that Weinstock, a retailer, was paid sometimes $100; sometimes nothing; sometimes $150. That is as far as I can remember it. I talked with Kalman [fol. 218] Shapiro about these payments. When Louis Spatz said he is paying $75 a week, I didn't believe it. Then, I made up my business to see Kalman Shapiro, and

ask him. I asked him if he is getting $75 a week from Spatz, and Kalman Shapiro said he didn't get a nickel of it. I don't know as a matter of fact whether or not he did receive the $75 or whether or not the other boroughs paid him $75. I base my entire knowledge upon what Spatz told me. Spatz told me that all of the four boroughs, including the Bronx, were each paying $75 a week to Kalman Shapiro. He also made reports at the meetings as to what retail market men he paid the money to.

Q. 443. Now, let us take up each one of these retailers to whom Spatz said he paid money.

Mr. Kroppy: I object to that as immaterial and irrelevant to the issues in this case.

The Court: Overruled.

Mr. Kroppy: Exception.

The Witness: I think Grobolsky, a retailer, received payments according to these reports. I can't tell you how much. All of the market men who received money from Spatz were located in the Bronx. And all of the markets who paid money to Spatz and the other collectors were located in the Bronx. A poultry dealer located on the bridge at 129th Street and Third Avenue received money $25 a week. Charles Russof and his brother-in-law, retailers, received also between $25 and $50. Celia Frank of the Columbia Poultry Company received about $40 or $50 a week. The Mount Vernon Poultry Company received about $100 or $150 a week. Friedlander sometimes received maybe $50 or $60.

I remember that Louis Spatz came and explained at the meeting that he made the deal with Manne Brothers, whole-
[fol. 219] sale marketmen, and with Rosenthal and Nathanson, and Plitkin & Sorkin, to pay so much money a week and take the customers and put them in other wholesale markets where they didn't do enough business. Manne Bros. had been paying money. When they stopped selling wholesale, they received money. For instance, if I was a market man and I did no business and they came to collect I showed my books and said, "How can I pay a cent a pound? My gross was $800, and my expense was $900. If I was to give you money I will lose." They came to Manne Brothers, and Manne Brothers said, "How can I pay you money? I do a little business and I cannot afford to pay Louis Spatz." So Louis Spatz says, "Sell out your whole-

sale business." He said "All right, how much will you give me a week?" Louis Spatz said "All right, I will give you $100 or $200 a week, and give me your wholesale trade." Manne said, "All right, I will sell it to you." He took Manne Brothers' trade, and put it in three or four wholesale markets. He would give to me three or four customers and three or four customers in the other place, and in the third place he would do the same. In the meantime he would at the end of the week make a little profit and pay that cent a pound, so that is the way it was. These small people who were paid money, they could do a wholesale as well as a retail business.

Joe Mast sometimes went with Spatz to collect. Sometimes Mast went back a second time if the marketman was not in, and collected.

This association in the Bronx lasted around a year. This collecting was all done before the criminal trial. Some weeks we didn't pay at all. For the most part collections and payments were made during the most of this period [fol. 220] of a year or so. Spatz received $100 a week compensation for his services that we knew of.

The Bronx marketmen bought Spatz a present. About this present, the market people came around and told me he is doing such wonderful work, they are all making a living, and willing to buy him a present, and they came down to me and asked me for $100, and I didn't give them five cents. They took up about $1,500 or $1,600, and they bought a Cadillac, and the car amounted to about $2,500, and he paid the balance himself, and he took it out.

Sokoloff and I went down to Meyer Friedlander to ask him for some money, a cent a pound, and when we come down to him he asked us for money. He says he cannot pay it. He says he wants us to pay a cent a pound for his customers, but finally we arranged with him he should keep the customers and should not ask us for money and we did not give him any money. He said he would not take anybody else's customers because he didn't have the money to conduct the big business. He always done a small business. If he did take somebody else's customers, he would not be prevented from getting poultry. We never done that.

Salthe did not break up our association, at one time. He didn't have to break it up. We broke it up ourselves. We made the association when Salthe came in.

Q. What did he say?
A. If I am not mistaken——

Mr. Kaufman: I think this is purely hearsay.
Mr. Rice: Sokoloff is a defendant.

The Court: It does not make any difference whether he is a defendant or not. It is a question of whether he is a co-conspirator. You put in declarations of a person not a party who is a co-conspirator, and the prosecuting officer is always indicting under the conspiracy section. They do not have to do that if you familiarize yourself with the rules of evidence. You will know that the declaration of a co-[fol. 221] conspirator in furtherance of a conspiracy is competent evidence, and if it should turn out here that the evidence is insufficient to establish a conspiracy participated in by the declarant, or the declaration was not made in the course of or in furtherance of the conspiracy I might have to discard it, but I will have to take it up. You cannot do it at once. I am going to hear you gentlemen sum up your case before the end. Proceed."

The Witness: I went to Salthe once and talked to him about the business after he opened up his branch business. We had our customers and we had an organization that protects our money. When a butcher came from another market and did not bring receipted bills, the other marketmen did not sell him. Now all these particular customers that owed everybody money, they went to Salthe. He never asked them anything, and he sold them poultry. I talked to Salthe about it, and he made me a proposition. He says, [fol. 222] if you want me to protect your money by not selling to any customers who cannot bring a receipted bill paid in full, then I will be left without business, because I heard every customer coming here owes money all over; but, he said, I will make you a proposition. You take from us five or six cars, or seven cars a week, and pay us a cent a pound more than the market, then we will protect your bills. I said to him, six or seven cars a week at one cent a pound amounts to about $1400 or $1500 profit a week. I says, if the market people are willing they can do it. I am in the commission business myself, and I look to sell to the Bronx marketmen too, and if you will take away all of the trade how will I go and sell my poultry? I am in the same line of business. I said I am not going to agree to it. Finally, after that I says to him, we will take from

you even more than that. I says, it doesn't make any difference. Any people that don't have to come to West Washington market to buy poultry, they can come just as good to your terminal and buy poultry from you at 149th Street, where it is only ten minutes from their place, but charge the same price West Washington charges, and you will get the commission. I said that because he was getting four or five per cent. from the shipper for handling the goods. He refused to do that. He wanted a cent a pound extra. I didn't do no deal with him, and I then come down to our people and reported. Now, what became of it after I don't remember.

After Max Sokoloff made an arrangement with Salthe I was out of the business. I don't believe they ever paid him a cent a pound.

I went to Benjamin Simon, and I asked him how much he [fol. 223] is getting a week. I told him "you are getting from Louis Spatz $900 or $1000 a week. He laughed at me and said "I never got that money from him."

For a few weeks we paid ½ cent a pound. Then we raised the payments to 1 cent a pound.

Cross-examination.

By Mr. Kaufman:

The Witness: I testified before that the purpose of this meeting in the summer of 1927 was to discuss some plan for owning a terminal; I think Benjamin Simon told us, to save some money. He said that part of the money was to be used to fight the union in case there was a strike declared by the union. That was discussed at that meeting, in the summer of 1927, at which Mr. Sokoloff was the chairman. It was at or about that time that these collections were commenced. The criminal trial started on the 4th day of October, 1929, and we ceased making collections in June or July of 1928. From that time on, there were no collections of any kind. And no meetings of any kind. At this first meeting, in July or August of 1927, there was talk about using part of this collection for the credit organization of the market men in the Bronx. At that time the market men were selling to butchers all through the Bronx. These butchers were supposed to settle their bills with the market men about once a week. Very frequently these

butchers would fail to settle with their market men and go to another market man. And that created great loss in the business for the market men, as high as $1,500 to $2,000 to a customer. I will tell you about the butchers: One butcher came into me this week and killed by me $500 poultry a week. The following week he is supposed to come and bring me a check for this $500. If he don't bring me [fol. 224] the check I wouldn't give him any more poultry; but the following week he did not come into me, and did not bring the check. He went away to second market and killed $500 poultry over there. His second market man didn't know he owes me the money, and the third week the butcher went to a third market and took $500 poultry, and finally, when he owed $1,500 the marketmen had no money and no customers. We came together and talked together between us. It just happened at that time that one man failed on me for $2,800, and failed on other markets more, because after he went away from me, he went to the other markets, and took poultry from them. He went to that man Steinberg and did the same thing. They have a judgment against him. We started to work together and we agreed to make a credit organization to try to protect our bills. Now we went and took a lawyer, and he made a credit organization for us. We started to work, and we had to use some of that money that we paid for the lawyer's expenses. We had to have people they should look out for that to be sure if a butcher owes me money, the other market men should not sell him before he pays me, and we had to have somebody to keep an eye on the business, and we had to pay for the expenses. It was those things that were discussed at this first meeting that I talked about in July or August of 1927. The only people that were in our organization were about 20 wholesalers from the Bronx. There were some other small ones in the Bronx that didn't belong to our organization.

Mr. Kroppy: I want to make a motion, if your Honor please, to strike out all the testimony of this witness, on the ground that the activities to which he has testified do not relate to or affect interstate commerce in any way; and also on the ground that they do not tend to prove a conspiracy, such as is alleged in the amended petition, or any conspiracy in restraint of interstate commerce.

[fol. 225] In that connection I ask your Honor to take cognizance of the decision of the Circuit Court of Appeals, to the effect that the interstate commerce ended with the sale to the market men, and the testimony given by this witness relates to the transactions simply between market men and the retailers, the butchers.

The Court: I will deny your motion.

Mr. Kroppy: I take an exception. I would like to ask this witness a few questions.

Cross-examination.

By Mr. Kroppy:

The Witness: In regard to these collections and payments of money to which I have testified, some of that money was to be used for the purpose of buying out other market men who were unable to do business profitably, or to pay retailers, in order that they should not engage in the wholesale business, and part of the money was to be paid to Benjamin Simon, who was the supervisor of the Chamber of Commerce. The money that was to be paid to Benjamin Simon or which Louis Simon said he paid to Benjamin Simon was to be paid into the fund for the purpose of building a terminal. There was nothing else said at any meeting at which I was present as to any other uses to be made of this money. All this money was collected and paid only during the period of the year from the summer of 1927, to about the summer of 1928.

I recall that a certain number of market men and members of the Shochtim Union were indicted in January, 1929. None of the market men in the Bronx nor any of the market men whom I have named here, held any meetings in the Bronx after that indictment. No moneys were collected or paid out after that. After we broke up there, there were no more meetings. We broke up in July, 1928, about six months before the indictment.

Redirect examination.

By Mr. Rice:

The Witness: This terminal that I spoke of, they didn't spend a nickel on it. I do not know whether they used any [fol. 226] of the moneys to fight the unions. I did hear

from market men that some of the money was used to fight the union. It cost me $12,000 to fight the union in 13 weeks. That was many years ago. The market men generally give one week's credit to the retail poultry dealers and butchers, who usually pay Monday afternoon for the previous week. That is the custom of the trade.

[fol. 227] ALBERT WINKEL, a witness called on behalf of the Government, first being duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: In 1927 and 1928 I was a live poultry market man. I belonged to the Greater New York Live Poultry Chamber of Commerce and was President and organizer of it from around June or July, 1926, to August, 1927. I was not a party to the criminal case and am not a defendant in this case. While I was president of the Chamber of Commerce, Charles Herbert and Joe Weiner were on its payroll for a short duration. They were hired for two or three weeks. In the summer of 1927 there were no duties, because they never did anything. I did pay them for two weeks salary, $75 a week. I did not hire them. The Board of Directors told me they hired them. I believe every borough had their representatives on this Board; from the Bronx, Louis Spatz and Max Rosen; from the east side, Louis Weidberg, Charles Mirotznik; from Williamsburg, Samuel Sahn and Philip Soperitzky. I may be incorrect but I am giving you the best of my knowledge. From Brownsville, Dave Hirshon, Morris Gordon; Coney Island, Abe Harrison; Borough Park, Sam Gold. This covered the same period that I was president of the Chamber. Benjamin Simon became supervisor of the Chamber of Commerce around May or June, 1927.

The industry needed what we thought a Landis of the baseball industry, and we had some investigation from the New York State Attorney General's office in regard to our business. During the early part of 1927, and during those conferences I got acquainted with Judge Ottinger, who was the Attorney General, and he told us he thought something

should be done for our industry and he would like to help us. I suggested at one meeting with the Attorney General [fol. 228] that he recommend any man who could be at the head of our industry, and put our business on a profitable basis, and he suggested Benjamin Simon, who was in the Attorney General's office as an investigator. We invited him up to our office. I told him I went to see the Attorney General and he had been recommended to us as a supervisor. We asked him if he could handle this, because he knew through his investigation all about the evils of our business, and we offered him a salary of $300 a week. He commenced work for the Chamber as supervisor in June, 1927.

Shortly after Benjamin Simon was engaged, there was a meeting of the Board of Directors held at which I proposed a fund of $100,000 to establish a credit bureau. We have had quite a little trouble in our business with this credit business of the butcher. We had quite a little trouble in regard to getting along with the labor unions, and in regard to handling our poultry economically, and with those different evils in view, I suggested that a fund be raised of $100,000, to handle these different evils outside of the dues that was coming into the Chamber of Commerce. We figured to collect it over the Jewish holidays of 1927, but we did not know when we were going to collect it or when we were going to stop; there was no time specified. The Jewish holidays was the busiest time of the year, most naturally we would do it at that time, but it was not agreed upon.

At this first meeting that I have been speaking about, I made a proposal to collect one cent a pound from the various markets of Greater New York, to collect $100,000. We had discussed ways and means. It was adopted by a tax of a cent a pound or a half a cent a pound, whatever we [fol. 229] found would be necessary. The taxation of one cent a pound was that agreed on at later meetings in June, 1927. We started making the collections around July, 1927. The Board of Directors as a whole appointed themselves collectors in their respective districts. There was nothing said at this meeting or the subsequent meetings about protecting the various markets from competition, or about compelling customers to buy at particular markets. There was nothing said about demanding receipted bills from cus-

tomers at that time. That was an idea of the credit bureau for which the fund was being created. The different members of the Chamber of Commerce operating wholesale slaughter houses were losing heavy money through unpaid bills. The plan was that if we did have a fund we go out and create a credit information bureau, which would give information to our customers. Whether any of the members of the Chamber of Commerce instituted that plan, I don't know, as I resigned before we had a chance. I do not know that shortly after these meetings were held, retail poultry dealers and butchers all over the City of New York were allocated to various markets. I do not know that this situation existed in Harlem. I conducted my own business and no one interfered with it.

I collected for two weeks in July, 1927, and the moneys I collected was turned over to Benjamin Simon and part of it was deposited. It was $2,000 or maybe $2,800; I don't remember. We had no local association in Harlem.

[fol. 230] By Mr. Rice:

The Witness: I made collections from the market men in the Harlem district, ranging from $75 to $125 a week. I made the following collections: $75 a week from Max Kaplan; $125 from Shiller & Levy; $125 from Albert L. Winkel, Inc.; $100 from Maurice Romain; $75 from 109th Live Poultry Market; $75 to $100 from William Simon; $75 from 121st Street Market belonging to Jacob Reisner and Max Wolas; $75 from Rosen and Witkins of the 122nd Street Market; $75 from Levy and Sherer. I collected for those two weeks and then went on a vacation. When I came back, I found out William Simon was collecting. That money that I collected, I turned over to Benjamin Simon, supervisor, I think it was $2,000 to $2,800, for the two weeks. We were supposed to open up a fund, a separate account in the bank for that fund. The moneys were supposed to be deposited. When I came back, I found the book in the office, and I found I think an entry there on June 13th of $1,300 or $1,400, around half the amount I remember turning in.

I don't know whether Benjamin Simon deposited any of the remainder or what he did with it. He said there was expenses that he incurred before depositing this money and

it had to be paid. He said the expenses were for some sort of political influence, but just what was that political influence, he did not tell me. He said, "Don't ask too many questions". It was after that time that I resigned. I did not like his attitude and I did not ask any more questions. At that time we were not being investigated by the State Attorney General's office or by the Department of Justice. [fol. 231] We were investigated by the Attorney General's office in regard to the Chamber of Commerce and its activities, but that investigation was closed. It was a short investigation. Benjamin Simon made no reference to that investigation. He did say something about paying money downtown, but did not give any other information as to where these payments were being made. I was never given a receipt for this money. I did not ask for a receipt for the remainder of the money. I did examine the deposit book. It was in the office. I asked Benjamin Simon for it and he showed it to me. The deposit book showed the deposit of the sums which I had turned over to Simon of about $1,350.

I do not know where any of the money collected from the various districts went. No one has told me. They all told me, they all turned it over to Simon the same as I did. The total amount that I collected in Harlem, I have my doubts on the amount. I figure at two weeks to be about 12 or 14 hundred dollars each week.

There was discussion that money should be collected from the whole city, to raise $100,000, for the Chamber of Commerce. It was first to be found out how much we could raise from our different boroughs, and then we should find out how long it would take to raise the $100,000. We figured about a thousand dollars from Harlem, and about five thousand dollars a week from all the districts together. That was our budget.

I prepared Exhibit 9 for identification, as a division of the way the money should be collected from the different boroughs, what they should contribute. I don't know what they did contribute. I don't know whether the Board of Directors ever had discussed it. It is probably some little scribbling of my own on a card which means nothing. It [fol. 232] was never put in the minutes or anything. All our meetings were conducted and minutes were put down while I was there. Nothing like that was ever discussed. It

was a plan, trying out to see what we could do. That is all I remember. I discussed it in the meetings that I think we should try and see what we could raise, but I don't know what they did raise or what percentage or anything else. The amount that we figured in the Board of Directors meeting was about an equal division, six boroughs. According to my figures here, there were different percentages. By looking at this card here, it was evidently my idea what was the percentage to be collected from the East Side. The East Side represented 16½ per cent. I most likely told the other members of the Board of Directors that I believed the East Side should contribute 16½ per cent. My best recollection is that I did discuss these percentages with the other members of the Board of Directors. If I was to take this card for a basis of discussion, I would discuss 16½ per cent. From my recollection, I never remember discussing it at all. It is a plan, and we were trying to see what we could raise. If this answers any purpose at all, it is something that I figured out, I think that is the way it came about, that is the way I think it ought to be collected. I still say I don't think I discussed any percentages. I don't think I did. I don't like to be evasive. I am trying to be truthful, but I don't remember discussing that far. We did not get that far. You might construe this paper and it is probably something that I scribbled down myself, but it had no bearing, I assure you, on the collection or anything, or anything to do with the Chamber of Commerce. I don't think we agreed on any certain percentages. I [fol. 233] prepared Exhibit 9 for identification as a schedule of percentages and amounts to be contributed by each district for my own information.

Mr. Rice: I offer Exhibit 9 for identification in evidence.
Mr. Perlman: I object to that.
The Court: Excluded. That is not evidence.

The Witness: I did not hand this Exhibit No. 9 for identification to any of the members of the Board of Directors. How it got out of my possession, I don't know. I don't remember giving it to anybody. I think it was my suggestion that the Board make some allocation of percentages of the collections to be made from the various districts, but whether they approved it or not, I don't remember.

Most likely they found out it was agreeable, if it could be accomplished. I believe they had no objection to it. At different meetings, there is no doubt they discussed the allocation to each district, but the exact percentage—the precise amounts of this allocation, I am now unable to state. I am positive that Exhibit 9 for identification is my handwriting. I don't know when I prepared it. I still say if you did not produce this card, I would have no recollection at all that there was any discussion of percentages or not. I still say there were funds to be raised and each director would see what he could raise in his respective district and bring in a report and we would see how we could tax each member after that. That is what I can remember. This might have been something of my own. I do not remember what percentages were paid by the various boroughs. Those two weeks I was out collecting, and then I went on my vacation, and I came back three or four [fol. 234] weeks later. What transpired, there were not meetings during those two weeks. Both times I went out, I turned the money over to Simon. We had no meetings in the summer. At the time that I went out to collect in Harlem, the other members of the Board of Directors said they were going out to collect in their respective districts. The arrangement was that Louis Spatz was supposed to collect in the Bronx. Louis Weinberg was supposed to collect in the East Side. He said he was going to. Samuel Sahn said he was going to collect in Williamsburg. Sam Gold said he was going to collect in Coney Island. No one refused to do it; they all agreed to do it. Dave Hirshon said that he was going to collect in Brownsville. Morris Gordon also said that he was going to collect in Brownsville. Abraham Herzog agreed to collect in Coney Island. Max Ring was assigned to collect in the Bronx. We agreed to turn it over to Benjamin Simon, the Supervisor. The Chamber of Commerce at that time also received dues from every member. Those dues were ten cents per week for the return of every coop. The different markets came down to the West Washington Market and buy their poultry, and the poultry is taken from the cars that come from out West, and put in coops. These coops are loaded and put on our trucks, and we take these coops and take them away to our place of business. The poultry is slaughtered and then after the poultry is slaughtered, we have the

empty coops in our places. We put these empty coops on our trucks, and return them to the New Jersey Coop Company for which we get 35 cents per coop for every coop we return. We send our bill at the end of every week or [fol. 235] every three or four weeks to the Coop Company for these empty coops.

At the start of forming the Chamber of Commerce, I devised a ways and means of taxing each member so much dues for every coop of poultry he sold, and we agreed upon ten cents per coop, each member to pay to the Chamber of Commerce, as a member, for every empty coop he returned to the Coop Company, and we hired a bookkeeper, and they agreed to deduct from the 35 cents a coop that we were to receive from the Coop Company, 10 cents a coop, and that money was to be paid to the Chamber of Commerce. The market man gets a coop with his poultry and the coops are always the property of the New Jersey Coop Company, or Bernstein & Sons, which are practically the same. If the coop is returned in good condition, the market man is entitled to *to* 35 cents back, but instead of getting 35 cents back, the market man after 1926 got 25 cents back, and the extra 10 cents was paid by the New Jersey Coop Company or Bernstein & Company to the Chamber of Commerce.

Approximately 200 cars of poultry come to New York a week, and there is approximately 90 coops to a car. That makes it 18,000 coops a week. Our income sometimes was $1,500 to $1,600 a week, about $90,000 a year.

I would like to get this on the record: Everybody was not a member. We organized and we got an income of from five to six hundred dollars a week from the ten cents a coop, and I know it went up as high as $1,500 and then it was $1,000, $1,200 a week. This income was in addition to the one cent a pound collection. The salary of the Supervisor was paid out of this coop money. At the time a market man became a member of the Chamber of Com- [fol. 236] merce, he made an assignment to it of his right to collect 10 cents a coop from the New Jersey Coop Company. They were supposed to be on file in the office. The Chamber of Commerce received this income from the 10 cents per coop as long as it was in existence. Just prior to the criminal trial, they stopped receiving ten cents per coop.

Q. 415. Is there any organization in existence today receiving ten cents a coop on this basis?

A. Yes, sir.

Mr. Kaufman: I object to that on the ground that it is immaterial.

The Court: Overruled.

Mr. Kaufman: Exception.

Q. 416. What is the name of that organization?

A. Live Poultry Slaughter House Men's Association.

Q. 417. Who are the members of that association?

A. About 75 per cent of the marketmen in New York City.

Q. 419. Substantially the same members as those that belonged to the Chamber of Commerce?

A. New ones and old ones, yes, sir.

Q. 420. For the most part, are they the same members?

A. Yes, sir.

Mr. Kroppy: I move to strike that out unless the witness states who are the members of the association.

The Court: Motion denied.

Mr. Kroppy: Exception.

The Witness: I was President from September 1 to October 1, 1931 of the Live Poultry Slaughter House Association. This is the organization for which George Minzer is the Arbiter at present.

Q. 420. Were you one of the organizers of this association?

Mr. Kaufman: I object to that on the ground that it is [fol. 237] incompetent.

The Court: Overruled.

Mr. Kaufman: Exception.

Mr. Perlman: Will Mr. Rice tell us whether he claims that this new association violates the law or is illegal.

Mr. Rice: I don't see any necessity in stating that.

Mr. Perlman: If it is a part of the continuance of a conspiracy, we would like to know it. Is it a part of a conspiracy which we are supposed to have continued. I would like Mr. Rice to tell us that, and I will be bound by his statement. Will you tell me that?

Mr. Rice: Not unless his Honor directs.

Mr. Perlman: Is the testimony offered now for the purpose of showing the continuance of an illegal act?

The Court: Proceed. I won't require counsel to commit themselves as to what their contention is going to be. The testimony is relevant.

Mr. Perlman: It is relevant?

The Court: Yes. I cannot tell what the effect will be or whether it will be connected.

The Witness: The Live Poultry Slaughter House Association was formed in the first part of September, 1931. I was one of the organizers.

Q. 433. Did you take part in the preliminary meetings of this association?

A. I did.

Q. 434. At the time it was organized?

Mr. Kaufman: I object to that, on the ground that it is immaterial, and not within the issues.

The Court: Overruled.

Mr. Kaufman: Exception.

[fol. 238] Direct examination.

By Mr. Rice (continued):

Q. Did you participate on the committee with George Skloot at any time immediately prior to the formation of the New York Slaughter House Association?

Mr. Perlman: I object to it on the ground that it is not proof in furtherance of any conspiracy, or the continuance of any conspiracy as set forth in the amended petition of the government here.

The Court: Overruled.

Mr. Kroppy: I object to it on the ground that the name of Skloot is named nowhere in the amended petition; that he is not a defendant in this case; and that any conversation that this witness had with him is absolutely incompetent and immaterial in this case.

The Court: Overruled.

Mr. Kroppy: Exception.

The Witness:

A. Yes, sir.

The Witness: Benny Forsmith, Abe Franzel, Abe Harrison, Morris Gordon were on that committee. At times there were others. Well, at one time we met in Jenks & Rogers' office. Prior to that time we had only had discussions in West Washington Market, at the various times during September, 1931. We did not frame any program at these committee meetings.

Q. I am talking about prior to your meetings at Jenks and Rogers; what did you discuss?

A. Forming a new association.

Mr. Perlman: Just a moment. I object to it as incompetent and immaterial and not within the issues or the proof of continuance of any conspiracy.

The Court: Overruled. I cannot tell.

Mr. Perlman: Exception.

The Court: Unless some different suggestion occurs to me growing out of the development of the case, it may be [fol. 239] put upon the record now that an exception taken by counsel for one of the defendants may be regarded as taken for all of the defendants.

Q. Mr. Winkel, what was said at these various preliminary meetings of the committee of which you spoke?

Mr. Perlman: I object to that on the same ground I offered before.

The Court: Overruled. You have got an exception.

The Witness: This committee, various members of the committee from time to time approached me in West Washington Market, and asked me if I would help them form a new association. We agreed to try to call a meeting, which we did, at the Broadway Central Hotel. And we got quite a few of the members of the Slaughter House men there, and put the question to them, "Would they want to join a new Poultry Slaughter House Men's Association?" I believe that I presided at the meeting, which was early in September, 1931, and we introduced Charles Tuttle, Mr. Mintzer and Mr. Rogers, who spoke to them along the lines of forming a new association, and he read off that

paper to them which I thought you were showing to me yesterday.

Q. Did any of the members of the committee read any papers at that meeting?

A. No, sir, Mr. Rice. If I may help you, may volunteer in trying to bring out, I believe I know who got up that paper, if you want me to help you.

Q. That is Exhibit 10 for Identification?

A. Yes, sir.

Q. All right. State, if you know.

A. That paper I believe was gotten up by George Skloot, secretary of the new association.

Q. When did he prepare this paper?

A. I don't know.

Mr. Kroppy: I object to any further testimony on that document, if your Honor please, because it appears now that George Skloot was not a party defendant to this action. He drew it up, and it is not claimed he was a party to this action. It is utterly irrelevant and immaterial to [fol. 240] this action.

The Court: Overruled.

Mr. Kroppy: Exception.

The Witness: This paper was not read at any meeting that I attended. I know that this paper was prepared by George Skloot from the get-up of it; I imagined it was. I see it is not signed or anything. There is nothing on it.

The members of this committee at that time were all market men. Most of them had been members of the Greater New York Live Poultry Chamber of Commerce. I don't think there were any members of the committee who had not been members of the Chamber of Commerce.

There was absolutely nothing said at any of the committee meeting about the excess number of wholesale markets in the city, or at the meeting which I attended at the Broadway Central Hotel. Nothing was said with regard to the elimination of competitive bidding among the market men for poultry purchases from the commission men.

I attended three meeting held at the Broadway Central Hotel. I was absent from the second meeting. I have no knowledge that George Skloot prepared that paper, Exhibit 10 for Identification. I made it my business to familiarize myself with what had gone on in my absence, and what communications had been sent out in my absence.

At the time I was president of this new association I knew of some documents prepared as a part of the program of that association; some letters that were sent out; but I didn't know of this Exhibit 10 for identification.

The income of the New York Poultry Slaughter House [fol. 241] Association was around $1,500 a week. The source of the income of the new association was dues of ten cents per coop from each member for every empty coop he returned to the New Jersey Coop Company, in precisely the same manner that the Chamber of Commerce received it.

Mr. Kaufman: I object to the comparison.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: Prior to the time that Benjamin Simon became supervisor of the Chamber of Commerce in May, 1927, Major L'Esperance had been supervisor about seven or eight months. At the meeting just before he resigned, the Major told them the way he wanted the thing conducted in a legal manner. He outlined the plans. He knew all the evils in the business. His idea was having a clearing house. That was his idea. He had ideas of dealing with the receivers in West Washington Market, about the elimination of culls in our poultry, and getting 16 ounces to a pound in our purchases and all those various things.

At these meeting- back in 1927 there were talks about not selling to chicken dealers and butchers who had not paid their bill to the proper market man. That has always been our discussion, if there was a way to protect our outstanding accounts, within the law, and one of them was that Major L'Esperance told us that we have a perfect right not to sell a delinquent account, that is, not to sell an account that has been delinquent with a fellow member of our association. He didn't say we had a right to agree. He said we had a right to refuse to sell a bad risk. We only looked to him for advice; there was no objection to his theories. If he said it was so, we were willing to go along those lines. I don't know offhand as to the cause he resigned unless [fol. 242] it was about this compensation that was due him. If you will refresh my memory about it, I will tell you if there was anything else that caused him to resign. One of

The objects of the Company were to carry on the business of Newspaper proprietors and publishers.

An Order for Compulsory Winding Up was made on 15th December 1930.

Cross Examined for Elman:

I have some years experience in registering Companies.

It is a very common practice for a Solicitor's clerk to sign the Memorandum of a Company and to act temporarily as Secretary and for the registered office of the Company to be temporarily at the office of the Solicitor.

RALPH MASSEY.

30 Jan. 1931. QUERTIER LE PELLEY on oath saith:

I am His Majesty's Greffier of the Royal Court of Guernsey and as such I am the Custodian of the Records of the Court. One of my duties is to act as Registrar of Companies registered in Guernsey.

158 I produce certified copies of the Files of Permanent Investments Ltd. Exhibit 129 and Pretoria Mining Estates Co. Ltd. Exhibit 130.

Permanent Investments Ltd. was registered on 26th March 1904 with a capital of £60,000 in 36,000 7% Preference Shares of £1 each and 24,000 Ordinary Shares of £1 each.

The only documents on the File are the Memorandum and Articles of Association, the Certificate of Incorporation, the Annual Returns and an allotment of preference shares.

The first Directors were Frederick Newbery, 15 Copthall Avenue, and Ira C. Ozanne, 5 Court Road, Guernsey.

The registered address of the Company was 5 Court Road, Guernsey.

Ozanne held at first 1 ordinary and 150 preference shares —Newbery does not appear as holding any shares.

7 Signatories held one share each.

Those were the only shares issued until 1928 when the Return shewed that Ozanne's holding had been altered to 151 ordinary shares; and in the return for 1929, he is shewn as holding 36,000 preference shares.

Only 7 of the shares issued up to that date had been issued for cash.

In the return for 1930 Newbery is shewn as holding 100 ordinary shares, and Ozanne 101 ordinary shares.

That return shews that 207 ordinary shares had been 159 issued for cash.

There are no documents on the File shewing the ownership by the Company to any property or rights to property in South Africa, or shewing that Permanent Investments Ltd. had transferred any property or rights to property to Vulcan Copper Mines Ltd. in exchange for 500,000 fully paid ordinary shares.

The Pretoria Mining Estates Co. Ltd. was registered on 6th December 1902.

Apart from the Memorandum and Articles of Association the Certificate of Incorporation and the Annual Returns—there are no other documents on the File.

The Directors were—from 1902 to 1928—Ira C. Ozanne, Sole Director.

The capital of the Company was £200,000 in £1 shares.

The first return of shareholders is for 1909 and shews 149,980 fully paid shares issued to Ozanne for a consideration other than cash.

The Managing Director and Sole Director was Ira C. Ozanne—he continued as such and as the largest shareholder until the Return for 1928 inclusive.

The return for 1925 shews Ozanne as holding 149,983 shares.

The return for 1929 shews Newbery as a director together with Ozanne, for the first time; but not as a shareholder.

In the 1930 return the directors are shewn as Newbery and Ozanne—and Newbery's address is stated as 15 Copthall Avenue, E. C. Newbery as holding 2000 ordinary shares and Ozanne as holding 147,983 shares, and 8 further holdings of three shares each.

It shews that only 7 shares were issued for cash—and that the remaining 150,000 were issued as fully paid up other than for cash.

There are no documents on the file showing that the Company owned any property or rights to property in South Africa or that the Company had transferred any of its 160 property or rights in South Africa to the Rhodesia Border Mining Corporation in exchange for 1,176,000 fully paid shares.

QUERTIER LE PELLEY.

2 Jany. 1931. ARTHUR GEORGE ASHBY, on oath saith:

I am the Secretary of the Committee on New Issues and Official Quotation of the London Stock Exchange.

No application for permission to deal in the shares of Asbestos and Holdings Trust Limited has ever come before the Committee; the same is true of the Vulcan Copper Mines Limited, and of Rhodesian Border Mining Corporation, Ltd.

I produce, Exhibit 29, a Schedule of the names of other companies in respect of which application for permission to deal has been made to the Committee.

I have shewn in Exhibit 29 what action was taken by the Committee in each case. The words "Record withdrawn" and "Record suspended" appear in that Schedule.

"Record Withdrawn" and "Record suspended" mean that dealings are allowed to continue but are not recorded on the marking boards in the Stock Exchange or published in the Supplementary List of Bargains.

ARTHUR GEORGE ASHBY.

162 2 Jany. 1931. FREDERICK FRANCIS SHARLES, on oath saith:—

I am an incorporated accountant and chartered secretary at Salisbury House, London Wall, E. C. 2.

I am Secretary of Fisher's Foils Ltd., whose registered offices are at my offices.

Just after the inception of this Company I was introduced to a Mr. Klein—whose photograph is Exhibit 16.

He was introduced to me in the Board Room at a Board Meeting which Klein attended.

That was sometime in January or February 1929.

Klein was not then registered as a holder of shares in the Company but he was actually the owner by purchase of 2,659,990 shares—1/- shares.

He paid for those shares by two cheques totalling £132,-999.10.0 drawn on the account of H. Wise at the North of Scotland Bank, Ltd., Lothbury.

I never met H. Wise.

There were dealings on the Stock Exchange on those shares shortly afterwards. But not at the time of my introduction to Klein. Application had not then been made.

Klein asked me—as is very usual—to obtain some nominees for him and I agreed to allow about 14 of my clerks to act as his nominees. He had about 97 nominees altogether.

The Committee of the Stock Exchange gave permission for dealings in the shares and dealings began about March or early in 1929.

The shares changed hands at prices varying from 1/- to 5/10½d.

I had no dealings in those shares myself.

So far as I know none of the directors or officials of the Company had dealings in them.

On 6th June I received the letter produced, Exhibit 30, from Butchart Carey Dalman & Co., accountants, and I replied by this letter—copy produced, Exhibit 31.

163 On 17th June I received the letter produced, Exhibit 32, giving the name of the client of Butchart Carey Dalman & Co. as Ellman.

On 26th June I sent them this further letter, copy produced, Exhibit 33, and I received their acknowledgment, produced, Exhibit 34.

On 9th July I sent this letter to Butchart Carey Dalman & Co., copy produced, Exhibit 35, and on 11th July received this letter in reply, Exhibit 36.

On 16th July I received this letter, Exhibit 37, from Ellman.

I received this further letter from Ellman dated 16th July, Exhibit 38, and the letter dated 30th July, Exhibit 39, addressed to the Chairman of the Company.

Ultimately the matter came before the Board sometime in July or August 1930 and the directors agreed to issue a circular letter to the shareholders and in consequence a circular letter, dated 8th August 1930—copy produced, Exhibit 40—was sent to all the shareholders.

The day before the issue of the circular the letter produced, Exhibit 41, was received from Ellman.

On Exhibit 41 are two signatures—one that of Ellman and the second is "for and on behalf of London Exchange Ltd.—E. A. Woodley—Secretary."

As a result of the issue of the circular a number of applications were received from shareholders for shares, enclosing the necessary remittances—transfers were executed and registered, and the money received was paid into a separate ac-

count called B accounts at the North of Scotland Bank, Limited, Lothbury, amounting to £14,354.15.0 for the purchase of 287,095 shares.

The shares so sold were all shares that had been issued to nominees of Mr. Klein.

The Committee of the London Stock Exchange suspended markings in the shares on the 15th August and in conse-
164 quence a letter dated 19th August—copy produced, Exhibit 42—was sent to Ellman.

His reply is produced, dated 20th August—Exhibit 43, and on 23rd August a payment was made direct to Ellman and a further payment on 19th September—£13,300 in all.

In the B account is an amount not yet paid over of £346.16.9 in respect of 6 or 7 shareholders. That money is retained with the concurrence of Ellman.

I called at Klein's office at 2, Broad Street Place. I saw there, I think the person whose photograph is No. 2 on Exhibit 17—the accused Spellen.

The highest marking the shares went to was 5/10½d. That was in the very early days of the Company.

In my opinion the value of the Company's shares now is about par—1/-.

Cross-Examined for Elman:—

The Company has a large modern factory at Wembley and a very good business indeed—in the manufacture of chocolate foils and patent packing machines.

In the early life of such a company the value of the shares is very speculative.

The shares were being purchased at 5/10d. during March and April 1929.

In July 1930 the market price was just over par, I believe, so that the offer to sell at par was a reasonable offer.

Since the end of March 1930 the shares have never gone much above par.

FREDERICK FRANCIS SHARLES.

165 2 Jany. 1931. JOHN WILLIAMS, on oath saith:—

I am a Company director and live at 5, Shepherd's Hill, Highgate.

Since 23rd May 1930 I have been Chairman of Fisher's Foils Ltd.

As a result of correspondence between the Secretary of that company and Messrs. Butchart Carey Dalman & Co., it was arranged that I should call and see Elman and I did so sometime in July 1930 at his office, 27 Lincoln's Inn Fields.

I was instructed to get some particulars as to the members of the American group for whom he was trying to sell the shares in the Company.

I asked Elman for the information and he declined to give any further information. He said his group were dissatisfied with the way the Company was being run and if necessary they would call an extraordinary general meeting and have the affairs of the Company investigated.

Exhibit 39 confirms what Elman stated to me at the interview.

I then called a Board Meeting and Elman's suggestion was considered and it was decided to agree to submit his proposal to the shareholders by a circular to be sent out by the Company. Exhibit 40 is a copy of the circular which was sent out. The terms of that circular were settled by the Board. Elman had nothing to do with that.

Upon receipt of the letter, EXHIBIT 41, from Elman that letter was put before the Board. The circular letter was the result.

Cross-Examined for Elman:—

Before the circular was sent we took legal advice—not from Elman—and on that advice the circular was drawn up and sent out.

JOHN WILLIAMS.

166 2 January 1931. FREDERICK HENRY MANNING on his oath saith:—

I am a Clerk at 3, Tokenhouse Buildings, E. C. I have a half commission brokerage connection with Messrs. James & Co. at that address. They were brokers to the Sunbeam Presswork & Conveyors Ltd. and after the incorporation of that Company they were communicated with by the principal shareholder, Mr. Dalton Parsons.

Messrs. James & Co. were requested by him to apply to the Stock Exchange Committee for a quotation and permission to deal in the shares.

In January 1930 I called at the office of Jenkins Baker & Co., Solicitors, 3 London Wall Buildings, on other business —and while there Mr. Sleigh, a partner in that firm, said he had a client who was willing to purchase a block of sound shares that were quoted on the Stock Exchange.

I made the usual inquiries as to the client's stability from Mr. Sleigh and received satisfactory answers. The client's name was not at that time disclosed to me.

I then approached Mr. Dalton Parsons who agreed to sell a block of shares to Mr. Sleigh's client—whose name was still undisclosed.

An agreement was drawn up and completed—produced EXHIBIT 50—between Mr. Dalton Parsons and myself—under which 25,000 shares were to be taken up at par—2/- within 14 days, and including various options on 475,000 shares at prices from 1/3d. to 2/3d. to be taken up as required, all shares in Sunbeam Pressworks and Conveyors Ltd. belonging to Mr. Dalton Parsons and the rest of the directors.

Up to roughly about this time I had no knowledge of the identity of Mr. Sleigh's client.

When confirming the terms I became aware of his identity from a draft agreement submitted for my signature, in which the client's name was given as A. J. Klein. That was some time in the latter part of January or beginning of February 1930.

Klein was present then.

Exhibit 16 is a photograph of him.

167 I asked Klein what he intended to do with the shares, he said he intended to take the market in hand and "put them better."

He told me definitely that he was acting for himself alone.

Klein handed me a cheque for £2,500 for the 25,000 2/- shares. There was no payment then made for the options.

I paid the cheque into my own account at the Midland Bank, Treadneedle Street and then drew a banker's draft for the same amount less £530 owing to me and £50 commission and handed the draft to the Westminster Bank, Threadneedle Street who held the shares against payment.

Up to that time there had been occasional markings in the shares of the Company—from 2/- to 2/3 a share.

The shares went into the name of, I believe, W. Knight, a nominee of Klein's.

After this transaction the shares became active and on one day they became so active that the Stock Exchange Committee stopped dealing with them. The shares went to 5/6d. or 6/-.

From the agreement to the suspension was only a space of a very few days.

I never called at Klein's office and I knew of no person associated with Klein.

Later Klein approached me as to the purchase of some share in "Sim's Motor Unit." Information had come to my knowledge on which I refused to have any further transaction with him.

168 The options on the 475,000 shares were not taken up except as to 35 to 40,000 which Klein took up.

Cross-Examined for Elman:

When I say the Stock Exchange stopped dealings I mean dealings and markets.

Buying shares in this way in order to "put them better" is a general practice.

These shares were not sold through my firm, except as to three sales. I took delivery for the whole amount that were sold and I received payment for them.

Re-examined:

In respect of these three sales I took payment on behalf of Klein and Klein received the money.

FREDERICK HENRY MANNING.

169 2 January 1931. REGINALD HARRINGTON BRETT on his oath saith:—

I am a director and secretary of T. W. Webb & Co. Ltd, 5 Moorgate Buildings, E. C.

I am now the sole director.

Formerly Mr. Frederick Smith was also a director—until about a month ago.

I nominated myself to be a director—I knew T. W. Webb & Co. I did some work and became a director.

T. W. Webb & Co. Ltd., consists of the shareholders and myself.

No other person has an interest in the Company.

I am the only person who takes an active part in the business.

I know the accused Newbury. I have business associations with him, in the buying and selling of shares.

I have been employed by him on all sorts of companies.

I was employed by him before I became a director of T. W. Webb & Co. Ltd.

Newbury has no interest in that Company.

I was employed by Newbury at 15, Copthall Avenue.

I came on the board of T. W. Webb & Co. Ltd. because I knew Mr. T. W. Webb and Newbury said I was to go on the board. It was owing to him that I got on the board.

I bought 20 shares, cash was paid for them. I don't know who paid. I did not.

I don't know how Smith got on to the board.

Smith was only a nominal director, simply signed cheques. I did the whole business.

I had known Newbury two years when I came on to the board, during which two years I was employed by him.

I know a man named Sidney Brignell, he is associated with Mr. Newbury, almost as his private secretary.

This (Exhibit 51) is a copy of a letter from T. W. Webb & Co. Ltd., to H. Wise dated 11th August, 1930. I signed that letter at Brignell's request. He being Newbury's private secretary. With that letter was a contract note, also produced.

T. W. Webb & Co. Ltd. had not then received the £33,000.

The contract note was made out by Brignell and I signed it.

T. W. Webb Co, Ltd. had at that time the right to sell the 1,176,000 shares in the Rhodesia Border Mining Corpora-
170 tion.

I presume we had.

I was simply doing what Brignell, Newbury's private secretary, asked me to do.

At that time Smith was also a director, but he had nothing to do with the matter. His directorship was purely nominal.

That transaction has not yet been entered in the books of T. W. Webb & Co. Ltd.

On 21st August 1930 I received a telephone call and went to 15, Copthall Avenue, the offices of Newbury, those offices are under the name of African Construction and various other companies, including Mezzanine Syndicate.

I was sent for and went there. I saw a man named Spiro and Newbury.

Spiro used to come there a great deal.

I was frequently there, backwards and forwards.

Spiro on this occasion in Newbury's presence asked me to come along in a cab. I did not know where to. I was to collect £33,000 and bring it back to the office.

I went with Spiro in a cab to 27, Lincoln's Inn Fields.

Produced Exhibit 52 is a letter of 21st August 1930 signed by the accused Newbury which was written before the journey. It is written on paper headed "The Pretoria Mining Estates Co. Ltd."

This is a copy of a letter signed by me on behalf of T. W. Webb & Co. Ltd. dated 21st August 1930 to H. Wise, Exhibit 53.

This is a copy of a letter from T. W. Webb & Co. Ltd. to Elman of 21st August 1930, which was signed by me on Newbury's instructions, Exhibit 54.

I know nothing of the Pretoria Mining Estates Co. Ltd. or who the directors are.

I did not know whom I was going to see when I went in the Cab. I was shewn into a private office and saw Mr. Elman there.

I believe I signed the two letters Exhibits 53 and 54 at 27, Lincoln's Inn Fields. We took them with us, on Newbury's instructions.

When we got into the office Elman said he expected to see Mr. Newbury.

Spiro said Mr. Newbury was doing the business in a different manner—through T. W. Webb—and his presence was not necessary. Elman agreed.

My instructions were to collect £33,000 either by notes or by cheque.

Spira said that Elman's cheque would do.

Elman said he would rather do it by notes.

He rang for his clerk, signed a cheque for £33,000, which his clerk took and returned with £33,000 in notes of £1,000 downwards.

Elman counted them and handed them to Spiro, who gave him back £4,000 for which Elman gave me the receipt produced Exhibit 55. Spiro and I then left.

Spira had the £29,000.

We returned to 15, Copthall Avenue and Spiro went into Newbury's office. I did not.

Brignell was to let me know what was done with the £29,000. He did not do so.

After 4 p. m. the Manager of the Midland Bank, Moor-
172 gate, telephoned to me and I afterwards spoke to Brignell who verified that the notes were at the bank in the account of T. W. Webb & Co. Ltd.

On 25th August 1930 on Brignell's instructions I obtained a bankers' draft for £28,000 payable to the Victoria Mining Estates Co. Ltd. Guernsey which I handed to Brignell. That left £1,000 in Webb's account.

They were entitled to a commission of 1%.

I did not deal at all on my own volition in these transactions, but entirely on instructions from Newbury, through whom I got on the board of T. W. Webb & Co. Ltd.

Recalled next page.

16 Jany 1931. *Recalled and Cross-Examined for Elman:—*

My interview with Elman to collect £33,000 was in August 1930.

I made a statement to the Director of Public Prosecutions in December 1930.

173 I have a clear memory of the conversation. It was such a large amount.

Most of the conversation was between Spiro and Elman.

I did see Elman draw a cheque. I don't know whom it was in favour of. I did not endorse it. I think I am sure of that. I am sure.

I do not remember seeing Elman take a cheque and write "cancelled" across it.

Produced is the original letter of which Exhibit 54 is a copy.

It is Exhibit 116.

When we took it to Elman's office the words "and to us" were not in that letter.

Spiro produced that letter at Elman's office.

I don't remember Elman asking who "Pretorio Mining Estates Co. Ltd." were. I don't remember Spiro saying they were the Vendors.

I don't remember saying, "I have not rendered any services to the Pretoria Mining Estates Co. Ltd." or anything to

that effect, nor Spira saying, "You are rendering services to me and we are working through Webb & Co."

I do remember Elman writing "and to us" in the letter after the words "to them" and I initialled the alteration. I do not remember any such conversation as that just put to me—leading up to that alteration.

Looking at Exhibit 116 I say now that the words "and to us" are in my writing.

I still say I do not remember any such conversation. I never heard it.

174 I did not know that Elman had to pay out some of the £4,000 to others. Most likely the reference in Exhibit 116 to "and your associates" means that.

I do not remeber endorsing any cheque. I did not endorse a cheque.

The money was handed to Elman first. He then handed it over to Spiro, who handed back £4,000 to Elman, for the services rendered "by him and his associates" as in Exhibit 116.

I did not see one of Elman's clerks at that interview, except the clerk who came up for the cheque. Mr. Elman's clerk was only present for the purpose of taking the cheque and bringing the cash. He simply came in and went out again. That was the only clerk of Elman's who was there at all.

The only people present were Spiro, Elman and I.

Further Added on Reading Over:—

I wish to add that I do not remember endorsing any cheque.

I remember the interview because the cheque was for such a large sum of money. I do not remember whether I endorsed a cheque for £33,000.

REGINALD HARRINGTON BRETT.

2 January 1931. CYRIL THOMAS NEWMAN on his Oath saith:—

I am an examiner in the Department of the Official Receiver in Companies Liquidation, 33, Carey Street, and
175 have been investigating the affairs of Broad Street Press

Ltd. and Vulcan Copper Mines Ltd., and Throgmorton Press Ltd.

As to Vulcan Copper Mines Ltd.

A petition for winding up was presented on 8th November 1930 and an order was made on 12th November appointing the Official Receiver provisional liquidator.

On 24th November a compulsory winding up order was made.

The Company was registered under the laws of Southern Rhodesia as a public Company with limited liability on 28th April 1930.

The Registered Office was at Buluwayo and London Office at 25, Victoria Street.

Article 45 of the Memorandum deals with the powers of directors, vesting the management of the business in the directors.

I produce EXHIBIT 56 the Minute Book of the Company.

The assets of the Company consist of £28,303.2.9. the balance standing to its credit at Barclays Bank in London and a sum at present unknown standing to its credit in its bank at Buluwayo.

In the books of the Company there is an item of £830 paid to A. J. Klein on 9th July 1930 in respect of the preliminary expenses of the Company.

I produce EXHIBIT 57 the cheque for £830.

I produce EXHIBIT 58 a contract between Permanent Investments Ltd. and Vulcan Copper Mines Ltd. of 27th June 1930, for sale to the Vulcan Company of mineral rights in Rhodesia and S. W. Africa.

Two of the directors of Permanent Investments Ltd. were Ira Clement Ozanne and F. Newbury.

Apart from the contract Exhibit 58 no documents have come into the official receiver's possession relating to
176 the possession by Vulcan Copper Mines Ltd. of any such properties as are referred to.

This is a letter dated 18th November 1930 from Alexander Fraser, Buluwayo to the Secretary of Vulcan Copper Mines Ltd. in London produced EXHIBIT 59.

As to Broad Street Press Also

I produce EXHIBIT 60 a cheque dated 3rd July 1930 for £33,000 drawn by Broad Street Press to Vulcan Copper Mines Ltd., for the purchase price of 66,000 shares of Vulcan Copper Mines Ltd. at 10/- each.

As to the contract Exhibit 58 the consideration was a payment of £512,000 payable as to £12,000 in cash and as to £500,000 in cash or shares at the option of the Vulcan Company.

Produced is a letter of 3rd July 1930 from Permanent Investments to the Vulcan Company signed by Ira C. Ozanne over a 6d. stamp, EXHIBIT 61, nominating Broad Street Press Limited to receive an allotment of 1,000,000 shares payable under the contract Exhibit 58. No consideration is mentioned.

From my investigation of the affairs of Broad Street Press I find that Broad Street Press sold 1,273,643 Vulcan shares, value £694,452.7.6. Those are more shares than the nominal capital of the Company. The sales were effected by means of the issue of circulars and canvassers.

Broad Street Press Ltd. in fact received £694,452.6. for the shares.

There were certain cancellation and repurchases which reduced the amount realised to £667,961.11.0.

I find that certain shares were sold as Vulcans and afterwards charged to Rhodesia Border Mining shares.

The explanation given was that there was to be an amalgamation of the two companies.

I produce a cheque dated 30th June 1930 drawn by Broad Street Press Ltd. to Permanent Investments Ltd. for £33,000 EXHIBIT 62. I have not discovered any explanation of that payment.

Assuming that to be for shares that would make a total of £66,000 paid to Vulcan and Permanent Investments which Broad Street Press Ltd. paid altogether for 1,237,013 shares which they sold for £667,961.11.0 a profit to Broad Street Press of about £600,000 in about 3 months.

Recalled next page.

16 Jany 1931. *Recalled*:—

re Vulcan Copper Mines Co.

The order for compulsory winding up of this Company was made on 24th November 1930.

178 The statement of affairs dated 2nd January 1931 showed assets:

Cash as bankers	£ 28,275.12.3
Other property:	
Interest in Mines in Rhodesia and S. W. Africa purchase price as per contract	£512,000.0.0
Estimated to produce	£ 6,000.0.0
Total assets	£34,275.12.3

It shewed liabilities:

to 6 unsecured creditors	£ 400. 1.6
Other liabilities	2 6,000. 0.0

being the reduced balance of cash consideration payable to the Vendors, making total liabilities, expected to rank for dividend, £6,400.1.6 and after deducting £7.13.0 due to preferential creditors there was an estimated surplus of £27,867.17.9 to meet the liability to shareholders of £533,200 leaving a deficiency of £505,332.2.3.

As to the item of £6,000, the directors stated on the statement of affairs "Although we believe these properties have a potential value far in excess of this figure we are unable to state what they are estimated to produce and merely quote this sum which it is understood the Vendors will accept as balance of the purchase consideration."

re Broad Street Press:

A petition for the winding up of this Company was presented on 27th October 1930 by Miss Oreun on the ground

179 that she had been induced to part with £6,000 on false representations made by the Company for investment in shares of Vulcan Copper Mines Ltd.

A winding up order was made on 10th November 1930.

The Official Receiver was appointed provisional liquidator.

According to the Return in Somerset House all the capital of £5,000 was issued in shares fully paid.

I have had all the books and documents of the Company at my disposal.

The shareholders at the date of the winding up were J. H. Osborn (Secretary) A. Paris and A. S. J. Osborn.

The books shew no receipt from those persons of any money for shares.

Produced is the Company's Barclays Bank Cash Book, EXHIBIT 63.

It shews the receipt on 17th September 1928 of £5,000 which is presumably as payment for shares.

I have traced £5,000 paid into Barclays Bank, Bishopsgate on 17th September 1928—to the Company's account.

That is the £5,000 with which the account was opened.

I produce the minute book of the Company, EXHIBIT 64, recording the first meeting of directors on 12th September, 1928 at 27, Lincoln's Inn Fields, present: A. Paris, A. S. J. Osborn, Elman and J. H. Osborn, and Paris and A. S. J. Osborn were appointed directors, and A. S. J. Osborn, Chairman.

No other directors were ever appointed.

On 12th September 1928 was a meeting of shareholders at which remuneration of directors was fixed at £100 per annum each.

The books of the Company shew that £2 a week was paid regularly to A. Paris, and to A. S. J. Osborn £2 a week from the commencement of the Company to 16th April 1929.

£4 a week from them to 11th January 1930 and £6 a week subsequently.

There is no authority in the minute book or elsewhere for the payment to A. S. J. Osborn of any sum in excess of £100 a year.

At the meeting of directors on 12th September 1928 J. H. Osborn was appointed Secretary *pro tem.*

No other person was ever appointed Secretary.

The books shew no payment to J. H. Osborn.

Those three persons constituted all the officers of the Company.

At the same meeting of directors Elman was appointed Solicitor to the Company, with remuneration of ordinary professional charges.

180 Elman has acted as solicitor to the Company since that time.

On 14th May 1930 the minute book shews that Reid Shar-

man & Co. were appointed Solicitors to act in consultation with Elman.

They are the only Solicitors shewn in the minute book to have acted for the Company.

The books shew only one payment to Elman, £250 on 7th October 1930.

That £250 was in respect of a bill of costs rendered by Elman to the Company on 7th October 1930 produced with covering letter, EXHIBIT 65.

The costs were incurred in respect of actions by the Company against the proprietors of "Truth" and others, for libel, and the costs of the action brought by A. S. J. Osborn against "Truth Publishing Co." and others for libel.

Those actions never proceeded to judgment. The bill of costs states, "Ultimately you decided not to proceed with such action."

181 There is no authority in the minute book to institute these actions.

Mr. Elman registered the Company. The registered offices were at his address.

The books shew no payment to Elman in respect to the costs of registration.

Article 67 of Table A provides that the business of the Company shall be managed by the directors.

My investigation shews that the directors took practically no part in the conduct of the Company's business. They never managed the Company.

J. Walker, A. J. Spellen, H. Guest, H. Green (or Geen) A. J. Klein and Moncrieff acted in the management of the business of the Company.

J. Walker gave instructions to Elman to register the Company. I produce a letter from Elman to the official receiver of 3rd December 1930, EXHIBIT 66, to that effect.

The payment of £100 referred to in Exhibit 66 was made on 4th September 1928 by A. J. Klein on behalf of Walker. I produce a letter of 5th December 1930 from Elman to that effect, EXHIBIT 67.

I have found no correspondence to and from Walker.

The books shew payments to Walker, but no receipts from him.

The payments to Walker are: 26th September 1928, £518.10.11. postage a/c G.P.O. 27th September 1928 £957.8.7 Cash, repayment of loan.

The cash book shews that up to 27th September 1928 there had been only one loan of £5,000 on 17th September 1928. That payment of £5,000 has been treated as £5,000 capital. If the £957.8.7 is to be treated as repayment of part of that £5,000 loan, the £5,000 could not, certainly not as to the whole of it, have been paid for capital.

The next payment to Walker is 27th September 1928, £1,250, by Hillman & Co.

On 6th September, £600, on 18th September £300 and on September 18th £350 were paid by Walker direct to W. H. Hillman & Co. Those three sums make up the £1,250 and were in respect of items:

City News & Addressing	£715.18.7
Sundries	£203. 6.2
Paper maker on a/c	£350. 0.0

The next payments to Walker are:

9th Octr. 1928, £520, by Postage a/c.

9th Octr. 1928, £ 25, by Petty Cash.

12th Octr. 1928, £125, Salaries and expenses.

I produce the paid cheques in respect of those six payments, EXHIBIT 68.

182 The cheque for £125 is drawn to Cash, but endorsed J. Walker and cleared through Barclays Bank, Fenchurch Street.

There are two other cheques dated 26th October 1928 drawn to cash, one for £143.1.6 and the other for £154.2.11 both cleared through Barclays Bank, Frenchurch Street, not endorsed, EXHIBIT 69.

The books of the Company shew payments to Spellen as follows:

23rd July 1930: £6,000, by cheque on Midland Bank, EXHIBIT 70.

There are other amounts which went into Spellen's account at the National Provincial Bank, Cheapside:

23rd April 1930, £245 to Smith Dalby & Welch, per H. J. S. The cheque was drawn to cash and paid through the National Provincial Bank, Cheapside.

The cash book, produced EXHIBIT 71, shews on the following day, 24th April, payments to

Smith Dalby	£ 238.11.8
Kinsler	£ 812.17.6
Kinsler	£1302. 6.6
Total	£2353.15.8

The cheque for £2,353.15.8 was drawn to cash and cleared through National Provincial Bank, Cheapside.

Exhibit 71 is the Company's Midland Bank No. 1 Cash Book.

I produce also the Company's Midland Bank No. 1 Cash book, EXHIBIT 72, on which appears the payment by cheque to Spellen, Exhibit 70.

Those items to Smith Dalby & Welch are not included in Smith Dalby & Welch's account, to Broad Sttreet Press Ltd. They rendered their accounts to Mr. Spellen at 42, Cornhill.

I produce the wages books EXHIBITS 73 and 74 shewing weekly payments to Spellen of £10 a week.

Also the miscellaneous book purporting to be a Salaries Book produced, EXHIBIT 75, kept by Moncrieff, shewing payments to unnamed persons, numbered 1, 2 and 3 of £20, £20.10.0 and £12 a week.

The totals of the weekly payments in Exhibit 75 are the same as the totals of the weekly payments in Exhibits 73 up to 9th February 1929.

Exhibit 73 shews the first three entries, for the week ending 29th December Spellen £10, Detrez £15, Moncrieff £10, and the total for that week is £165.3.6 including expenses, postages, etc. £27.

Exhibit 75 shews for the same week a total of £165.3.6
but it does not contain the item expenses postages etc.
184 and the first three items read No. 1 £20, No. 2 £20, and
No. 3 £17 with a note "overtime".

Among the Company's papers I find a document dated 30th July 1930, produced EXHIBIT 76, shewing a receipt by Augustus Young, Stockbroker, of £50,000 war bonds for safe custody and £5,000 war bonds of £1,000 each to be exchanged for one bond of £5,000. It contains also a receipt by Spellen for the return of bonds for £5,000.

I produce a letter from Spellen of 24th October 1930 to Augustus Young, EXHIBIT 77.

I produce a copy of a letter, EXHIBIT 78, of 10th October 1930 to H. Rowbotham, bearing the intials H.J.S./F.F. attached to the letter is a part of a label, addressed "Norman, 2 Br..... L.....". the rest of the address is missing.

I produce EXHIBIT 79, a receipted account of John Morgan & Sons Ltd. 42 Copthall Avenue, of 7th May 1930 addressed to Spelling, 52 Cornhill, relating to the removal of fittings to 52 Cornhill and writing letters "F. Jackson & Co." on the office door at 52, Cornhill.

In the cash book, Exhibit 71, is an entry: "By Morgan, £27.11.9" which is the amount of the account Exhibit 79.

I also found carbon copies letters written to Augustus Young from 42, Cornhill bearing the reference H.J.S./M.P. forwarding securities for sale, and some of them shewing the names of Clients, Exhibit 80, and I find that the proceeds of the securities were used in payment of shares in Asbestos & Holdings Trust Limited.

I produce also the acknowledgements of Augustus Young of those letters, addressed to A. J. Klein, also in Exhibit 80

I produce two memorandum books, EXHIBIT 81 containing entries shewing a record of orders received from clients
185 for the purchase and sale of securities from 6th May 1930 onwards. Those books appear to be in Spellen's handwriting.

The cash books do not record any payment to or receipt of any money from H. Guest.

In the private ledger is an account headed Guest. 16 items are debited to his account in March 1930, amounting to £31,875.12.7.

The cash book shews those as payments to James, Asbestos Consolidated Mines, H. Geen, Manning, A. Young and M. Singer.

There is no credit to that account.

At the foot of it is a note that all the above items are charged on Guest's instructions.

The private ledger of the Company is produced, Ex. 82.

I produce, EXHIBIT 83, a bundle of bought and sold contract notes from Augustus Young on the account of H. Guest, relating to transactions of Broad Street Press.

I produce, EXHIBIT 84, two receipts from Augustus Young

of 7th and 25th August 1930 acknowledging the holding for safe custody on Guest's account of £35,000 war bonds.

As to H. Green or Geen.

The Company's cash books and paid cheques shew payments to H. Geen as in Schedule produced, total £14,042.15.0, Exhibit 85.

I produce a bundle of contract notes from Ashford & Co. on H. Green's account for purchase of Edison Bell shares to the value of £14,000, Exhibit 86, and a number of slips from Ashford & Co. to Harry Green relating to the purchase of shares in Fisher's Foils and Swears & Wells, also in Exhibit 86.

Produced Exhibit 87 are the paid cheques referred to in the Schedule, Exhibit 85.

As to Klein:

The cash books and paid cheques shew payments to A. J. Klein as shewn in the Schedule produced Exhibit 88, totalling £86,959.5.3.

The paid cheques are produced Exhibit 89, paid into Klein's account with Brown Shipley & Co.

On the Schedule Exhibit 88 is one item of £120 in 1928, the others are all from March 1930 to 22nd August 1930.

I produced a letter of 6th June 1930, Exhibit 90, from Augustus Young to Klein, acknowledging the receipt for safe custody of 4,500 Radio Corporation of America Common Shares.

I produce a number of contract notes from T. Gordon Hensler & Co. to Klein, between March to September 1930, Exhibit 91, and from Ashford & Co. and Crew & Co. to Klein, all in Exhibit 91.

As to Moncrieff:

Apart from a payment of £7.7.6. on 20th October 1928 Moncrieff appears to have received only a weekly wage.

As to the Business of the Company:

The Company published a 6d. weekly financial paper from 19th September 1928 to 15th October 1930, first under
186 the name of "City News and Stock Exchange Observer" up to 5th June 1929. Each copy bore the name "A.

S. J. Osborn, Editor". From 12th June 1929 to 31st July 1929 the paper appeared as "Finance" with which is incorporated City News and Stock Exchange Observer".

On 7th and 14th August 1929 the title was "Finance without that addition.

From 21st August 1929 to 15th October 1930 it appeared as "Finance and Stock Exchange Observer".

The name Norman D. Spencer first appears as editor on the issue of 11th September 1929 and thence on each issue to the last.

I produce one copy of each number of the paper between 19th September 1928 and 15th October 1930, EXHIBIT 92.

The issue of 23rd April 1930 first contained a "Stock & Share Department" which was continued in each number after that.

At a meeting of 13th October 1930 at Elman's office the minute book shews a resolution that a draft agreement for sale of the Company's business to Throgmorton Press Ltd. was approved for sealing.

I produce EXHIBIT 93 an agreement executed by Throgmorton Press Ltd. shewing that for £4,785 paid by Throgmorton Press Ltd. to Broad Street Press the Company
187 sold the good-will of its business of a newspaper proprietor, the copyright of Finance & Stock Exchange Observer, list of subscribers and the file of correspondence with its subscribers and readers, furniture and office equipment at 2 Broad Street Buildings and £1,497.6.11, being the amount standing to the credit of Broad Stret Press Ltd., in their No. 2 account at Barclays Bank, Bishopsgate.

The Cash Book, Exhibit 63, shews the receipt by Broad Street Press of £4,785 under date 17th October 1930.

I produce the Cash Book of Throgmorton Press Ltd., EXHIBIT 94. It shews under date 15th October 1930, a receipt of £6,000 also the pass book of that Company, Exhibit 95, shewing the payment in of that sum into the National Provincial Bank Ltd., Finsbury Circus Branch.

On the same date is a payment out of £4,785 for a banker's draft.

I produce that draft, EXHIBIT 96.

The £6,000 was in Bank Notes, according to the Pass Book.

I have traced that £6,000 as coming from the account
188 of H. Wise at the North of Scotland Bank Ltd., drawn out of that account by A. J. Klein.

Up to the end of February 1930 Broad Street Press apparently confined itself to running the paper "Finance" and selling various speculative shares through the market.

I have closely examined the Cash Book. Up to the end of December 1928 subscriptions to the paper amounted to £613, and the Company's total receipts amount to £29,613.

The difference between those two figures is represented by loans of £28,000 and other miscellaneous items.

I produce a book entitled "Stock Exchange"—"It's Methods and Practice" by A. S. Osborn, EXHIBIT 97. It appears in the Company's newpaper as sent out early in 1929 and the accounts shew that up to 19th February 1929 over 36,000 copies had been distributed to clients.

An analysis of the cash books for 1929 shews the total receipts of the Company £83,045, of which £78,000 is shewn as loans.

The receipts for 1930, up to October, total £1,622,926.16.0. of which £1,619,736.12.5. was received during the 8 months March to October.

The receipts from March to October were cash received from Clients and proceeds of sale of shares and securities received from clients. There were no loans during that period.

I produce EXHIBIT 98 a schedule shewing details of the monthly receipts.

The cash book, Exhibit 63, shews in January and February three cheques amounting to £1,720, *i. e.*

17 Jan.	£500
30th Jan.	£500
22nd Feb.	£720

described as cash.

I have traced those cheques as coming from the account of H. Wise at the North of Scotland Bank, drawn by Klein.

The total receipts of the Company from incorporation to end of February, 1930, were £115,848 of which £108,720 is shewn by the books to have been loans.

For March, 1930, the receipts were £102,352.5.9, no part of that being shewn as loans.

I find no loans from March to October, 1930. The bulk of that £102,352.5.9, represents moneys received from clients or proceeds of sale of securities received from clients for re-investment in Asbestos & Holdings Trust Ltd.

I find from the correspondence between the Company and its clients that about 10th March, 1930, clients were advised to invest in Asbestos & Holdings Trust Ltd. shares at par 5/-.

Between March and June, 1930, the Company sold 1,072,666 shares in Asbestos & Holdings Trust Ltd. for £297,405.18.6. and I trace two amounts paid by Broad Street Press to Asbestos & Holdings Trust Ltd., on 20th March, 1930, £30,000 and 24th June, 1930, £22,500. I produce the two cheques EXHIBITS 99 and 101.

(Note: There is no EXHIBIT 100.)

Just prior to that purchase by Broad Street Press, Broad Street Press had bought back from clients Sunbeam Presswork & Conveyors Ltd. shares to the value of £4,734.4.0. Deducting that figure from £297,405.18.6. because the books shew that the Company got those shares from clients instead of cash, the amount received by the Company is £292,671.14.6.

The net profit to the Company is therefore £240,171.14.6.

Up to the end of February, 1930, the banking account of Broad Street Press was at Barclays Bank, Bishopsgate.

On 21st March, 1930, a further account was opened at the Midland Bank, Gray's Inn, at which Elman had his account.

I produce three circular letters undated relating to Asbestos & Holdings Trust Ltd., Rhodesia Border Mining Cor-
189 poration Ltd., and Vulcan Copper Mines Ltd., EXHIBITS 102, 103 and 104.

I produce a letter of 10th March, 1930 to John M. Maxwell, EXHIBIT 105 and another of 5th March to W. Lenton, EXHIBIT 106 both signed Norman D. Spencer and a further letter to Maxwell of 29th March, EXHIBIT 107.

Towards the end of May, 1930, according to the books the sale of Asbestos shares practically ceased and on 28th April 1930, Vulcan Copper Mines was registered in Southern Rhodesia.

On 21st May, 1930, I find that clients of Broad Street Press were circularised, as in copy circular produced EXHIBIT 108. The shares mentioned in that circular had not been bought by the Company in large numbers.

I produce a letter to Mr. Maxwell of 27th May, EXHIBIT 109.

I find that Broad Street Press sold 233,453 Edison Bell shares for £167;567.10.4. mostly at 14/- a share.

The majority of the contracts are dated round about 26th May.

I find that on 12th June the Company sent prepaid telegrams to the purchasers of Edison Bell shares advising the sale of Edison Bell shares at 23/- and reinvestment of the proceeds in Vulcan Copper Mines at 10/- and as a result Broad Street Press purchased from its clients 211,669 Edison Bell shares at 23/- for £241,149.14.0 shewing a profit to clients and a loss to the Company of £73,633.3.8.

190 The Company sold 247,137 Vulcan Copper Mine shares to clients at 10/- as a result of the Edison Bell transaction.

The Company sold 60,729 Guy Motor shares at 15/- for £45,894.15.6. and repurchased 59,610 shares at 19/- for £56,-627.4.0. shewing a profit to clients of £10,732.8.6. the bulk of which was reinvested in Vulcans.

By the end of July, 1930, the sale of Vulcan Copper Mine shares had practically ceased and in the middle of July Clients were advised to buy shares of Swears & Wells at 15/-. I produce a circular letter, EXHIBIT 110.

On 31st July clients were advised by telegram to sell Swears & Wells at 21/- and to reinvest in Rhodesia Border Mining Corporation Ltd., at 10/-.

The Company sold 60,729 Guy Motor shares at 15/- for 162.13.9. of which they repurchased 114,347 shares from clients for £118,767.15.6. a profit for clients of £24,605.1.9.

In September, 1930, clients were advised to buy shares in Triplex Safety Glass at 25/- and a little later to sell out at 35/- and invest the proceeds in Rhodesia Border Mining Corporation Ltd.

The Company sold 62,778 Triplex shares at 25/- for £80,-709.16.6. and repurchased 58,328 shares at 35/- for £100,-774.9.10, shewing a profit to clients and loss to the Company of £20,064.13.4. the bulk of which was reinvested in Rhodesia Border Mining Corporation shares.

The Company sold 805,305 Rhodesia shares for £478,-817.10.6. but they also delivered 251,095 Rhodesia shares for £144,973 to clients who had instructed them to purchase Vulcans. I produce EXHIBIT 111 a sample of the correspondence passing between the Company and clients in such cases.

The total sales of Rhodesia shares was then 1,056,400 shares for £623,790.10.6.

The only payment for the Rhodesia shares in the books of the Company is £33,000 on 29th August, 1930, cheque produced EXHIBIT 112.

The profit shewn in £590,790.10.6.

In my evidence of the 2nd January I stated that the profit to the Company on the sale of Vulcans was about £600,000.

That figure should be £456,988.11.0. The explanation
191 being that the first figure was the profit on the sale of 1,237,013 shares, but this has to be reduced by £144,973, the value of shares sold as Vulcans but in respect of which clients received Rhodesia shares.

The total profit made by the Company by the sale of Asbestos, Rhodesia and Vulcan shares was £1,287,950, less £129,035 the losses incurred in the Edison Bell, Guy Motors, Swears & Wells, and Triplex Glass transactions, making a net profit of £1,158,915.

As to H. Wise:

The cash books shew payments to H. Wise, from 13th June 1930 to 27th October, 1930, inclusive, amounting in all to £709,180.

I produce the cheques on the Midland Bank, EXHIBIT 113, and the cheques on Barclays Bank, EXHIBIT 114 for those payments. I produce EXHIBIT 115 a Schedule of those payments.

As to J. Wise:

The cash book Exhibit 63 shews a receipt on 2nd October, 1928, of £5,000 "Loan, J. Wise."

That book and the cash book Exhibit 71 also shew the payments in 1930, to J. Wise:

9th April	£ 250.)	
22nd May	1,700.)	
26th June	106.1.9.)	Total £2,341.1.9.
and 10th Sept.	285.)	

30th Jan. 1931. *Recalled:*

I produce the cheque for £245 dated 23 April, 1930, Ex. 117.

I also produce the cheque for £2,353.15.8 dated 24th April 1930, EXHIBIT 118.

192 In addition to the £14,000 mentioned in Ex. 86 I produce a cheque for £575—dated 20 May, 1930, drawn on the

Broad Street Press account at the Midland Bank Ex. 119 to S. Green.

I produce the cheque for £6000 dated 15th October, 1930, signed pp. H. Wise, Arthur J. Klein EXHIBIT 120.

I also produce the three cheques amounting to £1720 shewn in the cash book EXHIBIT 63:—EXHIBIT 121 for £500, EXHIBIT 122 for £500, EXHIBIT 123 for £720.

I produce also the cheque for £285 dated 10th September, 1930, drawn on the account of Broad Street Press to cash EXHIBIT 124.

Further as to Broad Street Press Ltd.:

From the File of the Company I find that a large number of persons were employed by the Company for the purpose of selling shares—about 20 persons in all. There is no record in the Company's books of any payment to those persons.

In the correspondence is a frequent reference to calls by these various persons on clients or prospective clients.

Towards the end of August, 1930, clients were beginning to make claims for rescission of contracts on the ground of fraudulent misrepresentation.

I produce some of the correspondence EXHIBIT 125 and I refer to letters—in the cases of Miss Cheetham, Mr. Nilmo, Sir H. French, Miss Napier, Mr. Hartley, Mr. McArthur, Joseph Smith and George Hope.

The last payment to employees in the wages book is dated 24th October, 1930.

The minute book Exhibit 64 shews that on 27th October 1930 a meeting was held at which the voluntary liquidation of the Company was considered. It shews that A. J. S. Osborn and A. Paris, Directors, and Messrs Reid Sharman & Co. Solicitors and Mr. I. Levy, Accountant, were present.

The balance at the Bank at the close of the day before that date is shewn by the pass book to have been £6,642.17.5.

On 27th October a cheque for £6000 was drawn, with other cheques—to H. Wise. It is one of the cheques in Ex-
193 HIBIT 114. After certain other sums were drawn out a balance of £508.9.1 remained—which was collected by the Official Receiver.

On 27th October it was resolved that a Meeting of Shareholders be convened for the purpose of going into voluntary liquidation.

The Minute book shews a meeting of shareholders held on

28th October at which A. S. J. Osborn, A. Paris and J. H. Osborn were present as shareholders. No one else is stated to have been present.

A resolution "that the Co. be wound up voluntarily" was passed and "that Mr Isaac Levy be appointed Liquidator."

The Minute book shews another meeting on 29th October—a meeting of creditors, present A. S. Osborn, I. Levy and Mr Tredgold, Solicitor, advising Levy. The Minute records that no creditors appeared etc.

My investigations shew that there were in fact creditors of the Company at that time—but not many.

The Petition was presented on 27th October 1930 by Miss Oerun.

My investigation shews that prior to March 1920 there were no books kept shewing the purchase and sale of shares.

In the cash book Ex. 72, on 7 July 1930 is a receipt of £25,000 and £15,000. Produced is a cheque for £15,000 drawn by H. Wise on 7th July 1930 on the N. of Scotland Bank to cash and cleared through the Midland Bank, Grays Inn Branch, the Company's Banking account EXHIBIT 126.

I find that the Company were selling shares in Vulcan Copper Mines and Rhodesia Border Mining Corporation Ltd. as principals.

As regards Vulcan Copper Mines Ltd. the Contract Ex. 58 refers to mining rights in Southern Rhodesia and S. W. Africa. Those two districts are about 1000 miles apart as the crow flies with the Kalahari desert between them.

As to Throgmorton Press Ltd.:

I have also acted as Examiner in respect of the Throgmorton Press Ltd.

I produce the Company's cash book Ex. 94. It shews the payment of £6000 on 15th October 1930 into the Company's account at the National Provincial Bank, Finsbury Circus. The pass book is Ex. 95. On the same day is a payment out of £4785 for a banker's draft. That £6000 was received from A. J. Klein.

The Company was registered with a nominal capital of £10,000 in £1 shares. Four shares have been allotted. Two to the signatories to the memorandum and one each to the two Directors: Cyril Alfd Hannan Harris and Geo. Edwd. Reginald Wheal. The signatories to the Memorandum were

clerks in the employment of Messrs. Reid Sharman & Co. Solicitors.

The paid up capital at the date of the winding up Order was £2—which was paid by the two directors on 29th November, the date on which the Petition for compulsory winding up was made.

The Winding up Order was made on 15th December.

I produce the Minute book of Throgmorton Press Ltd. Exhibit 127. It shews that a meeting of Directors took place on 14th October 1930 at the then registered office in the office of Reid Sharman & Co. at 35 Bedford Row. It re-
194 cords that a draft of the Contract for the purchase by Throgmorton Press Ltd. of the newspaper "Finance" and other assets from Broad Street Press Ltd. was produced.

When the Provisional order for the winding up of Broad Street Press Ltd. was made I found that some furniture and practically all the correspondence files of that Company were missing.

On 11th November I attended the offices of Throgmorton Press Ltd. and found a number of filing cabinets containing correspondence between Broad Street Press and clients; and some furniture which was afterwards identified by a boy named Shortlands.

Throgmorton Press Ltd. was formed to publish a newspaper and published a 6d weekly paper called "Financial Observer." I produce three copies of that paper of 29th October, 5th and 12th November, Exhibit 128. It had the same "make-up" as "Finance" the paper of the Broad Street Press.

I did not find the original cheque book of the Company—The Throgmorton Press Ltd.

The cash book does not shew any receipts from sales of newspapers.

From the Statement of Affairs which was filed by Mr. Harris, Director, on 22nd January 1931, I find that assets estimated to produce £2,315.11.7, liabilities to eight unsecured creditors £416.15.4, shewing a surplus of £1,874.16.3 over creditors to meet the claims of shareholders.

Other liabilities amounting to £6030.4.6 are shewn as not expected to rank—including £6000 claimed by Broad Street Press Ltd.

195 The offices of Throgmorton Press Ltd. were at Ludgate House, 110-111 Fleet Street.

Cross-Examined for J. Wise:

Referring to Ex. 63 and the entry of 2nd October 1908—"Loan, J. Wise £5000"—there is no other evidence that J. Wise lent £5000 to Broad Street Press.

I only know what is on the entry in the cash book.

Looking at Ex. 124 there is no indication on that cheque that J. Wise received that cheque or the proceeds of it. The cheque is payable to cash and is unendorsed. It has the crossing stamp of Barclay's Bank, Knightsbridge.

Cross-Examined for Spellen:

I believe the persons whose correspondence is in Ex. 125 are alive. I do not know for certain. I do not know them and I do not know their handwriting. They can be called to produce their correspondence.

Recalled next page.

12 Feb. 1931. *Recalled*:

I now produce a cheque for £1700 dated 22nd May drawn by Broad Street Press Ltd. to J. Wise and endorsed "J.
196 Wise," EXHIBIT 142, and a cheque for £250 of 9th April also drawn by Broad Street Press Ltd. in favor of J. Wise and endorsed "J. Wise," EXHIBIT 143.

Those are two of the cheques referred to at the end of my evidence given on the 16th January 1931.

CYRIL THOMAS NEWMAN.

30 Jan. 1931. JOSEPH WALLIS HILL on Oath saith:

I am an Examiner in the Department of the Official Receiver in Companies Liquidation. I have had the conduct of the winding up of Rhodesia Border Mining Corporation Ltd.

The Petition was presented on 8th November 1930.

The Official Receiver was appointed Provisional Liquidator on 10th November.

The Winding up Order was made on 24th November.

The Directors were Alexander Fraser and Sidney Aston Redrup, both of Buluwayo, and Jesse Hill and Harry Brignell of London.

Hill and Brignell were the only Directors who held the required qualification shares of 100 each.

197 They did not pay for the shares themselves. I cannot say definitely who did pay.

I produce a copy of the Memorandum and Articles of Association EXHIBIT 131.

Article 47 provides that the management of the business shall be vested in the Directors.

My investigation shews that the business of the Company was not managed by the four directors.

The Articles No. 37 provide remuneration of £200 a year to the Chairman and £300 a year to be divided between the other directors.

My investigations shew that Hill received £50 as Chairman for one quarter and Brignell £25 for one quarter.

I produce an Agreement between the Pretoria Mining Estates Co. Ltd. and the Rhodesia Border Mining Corporation Ltd. dated 6th August 1930 EXHIBIT 132 reciting that the Pretoria Company as Vendors are possessed of or otherwise well and sufficiently entitled to certain copper bearing properties and the Lomagundi District copper areas in Southern Rhodesia and referring to three properties, one in South West Africa and the other two in Southern Rhodesia. Between Southern Rhodesia and South West Africa is the Kalahari Desert and about 1000 miles.

The Agreement provides for the purchase by the Rhodesia Company from the Pretoria Company scheduled proper-

198 ties being all mining and other rights in certain developed mineralised blocks of copper claims.

The consideration was £600,000 payable £12,000 in cash and the balance at the option of the Company either in cash or by allotment of 1,176,000 Rhodesia shares of 10/- each credited as fully paid up.

The £12,000 cash was not paid but the 1,176,000 shares were allotted.

The date of completion was to be 31st October 1930, and the Agreement is signed for the Pretoria Company by Ira C. Ozanne, Director. It does not bear the Company's seal.

It is also signed by Jesse Hill for the Rhodesia Company over a 6d. stamp.

I produce the Minute Book of the Rhodesia Company EXHIBIT 133. Under date 6th August 1930 is a Minute recording the signing of that Agreement at 80A Coleman Street and

shewing as present: J. Hill, H. Brignell, Director and J. C. Benoy, Secretary.

Apart from that Agreement I have found no documents of any kind as to the existence of those properties in Africa or shewing that such properties were owned by the Company.

I can find no record of completion having taken place on 31st October as provided in the Agreement.

On 27th October the Pretoria Company applied for an extension of time for a further two months, by letter produced signed Ira C. Ozanne EXHIBIT 134 and that was agreed to by this letter of the 30th October Copy produced, EXHIBIT 135.

On 25th August the Pretoria Coy. wrote the Rhodesia Press this letter EXHIBIT 136 nominating Broad Street Press to receive 1,176,000 Vendors Shares at 10/- each.

I produce EXHIBIT 137 a copy of a letter from the Rhodesia Co. to Broad Street Press dated 15th August 1930 as to the grant of an option on 257,000 further shares of 10/- each at par.

With the purchase of 66,000 shares, the allotment of 1,176,000 shares and the option on 257,000 shares, Broad Street Press had all the shares of the Rhodesia Coy. with the exception of 200 that went to the Directors and 800 shares that went elsewhere.

On 29th August 1930 Broad Street Press applied for 66,000 shares at par, application produced EXHIBIT 138 signed A. S. J. Osborn.

A cheque for £33,000 was paid into the Co's banking account on 15th September 1930. I produce the Company's Paying in book EXHIBIT 139.

I find that the Pretoria Coy. sold the whole of the Vendors shares to H. Wise, 2 Broad Street Buildings, for the gross sum of £33,000 as in contract note Ex. 51.

On 21st August 1930 the Pretoria Co. wrote the letter Ex. 52 to T. W. Webb & Co. Ltd. instructing them to deduct £4000 and to sign a commission letter to Elman and pay him that sum and on the same day I find that T. W. Webb & Co. undertook to pay Elman £4000 as in the copy letter Ex. 54 and Ex. 55 is Elman's receipt for that sum. On the same day T. W. Webb & Co. wrote to H. Wise the letter Ex. 53 undertaking to deliver the shares.

I produce correspondence to the Rhodesia Co. from Broad Street Press between 2nd September and 31st October 1930 giving lists of nominees EXHIBIT 140.

The Statement of Affairs of the Rhodesia Coy. was lodged with the Official Receiver on 6th January 1931 by Jesse Hill and Harry Brignell. It shews Certificates for 1,049,281 200 shares issued, all except 200 shares to the London directors were issued through Broad Street Press.

It shews cash at Bankers £29,413.18.4 and other property including interest in mines in Rhodesia and South West Africa purchase price per contract £600,000 estimated to produce £6000 and total assets £35,413.18.4. Total liabilities £7,141.6.3, including seven unsecured creditors for £1,123.17.6 and other liabilities £6000 being the reduced balance of cash consideration payable to vendors of property in Rhodesia and South West Africa. There is shewn as due to Preferential Creditors £17.8.9. The estimated surplus for shareholders is shewn as £28,272.12.1 to meet liability to shareholders of £621,100 shewing a deficiency of £592,827.7.11.

These is a note as to the explanation of the Directors as to the reduced value of assets other than cash, at £6000 *i. e.* as to interests in properties, in South West Africa and Southern Rhodesia. They say "Though we believe these properties have a potential value far in excess of this figure we are unable to state what they are estimated to produce and merely quote this sum which it is understood the Vendors will accept, as balance of purchase consideration."

W. J. Wallis Hill.

201 12 Feb. 1931. Albert Simon Joseph Osborne on his Oath saith:—

I live at 33B Clanricard Gardens, W. 2.

Shortly before September 1928 I was a Clerk in the employment of Newman Williams & Co. outside brokers of 42 Copthall Avenue.

While I was so employed I was introduced to the man whose photograph is Exhibit 20. I knew him as Walker.

I was introduced to him in Copthall Avenue. I cannot remember by whom. Shortly after the introduction I met him again and saw him from time to time at the office of Newman Williams & Co. I don't know what he called there for.

He asked me if I would like to become a director of a Com-

pany. He did not at the time name the Company. He said he was going to bring out a high class financial newspaper.

I knew nothing about the running of a newspaper.

I cannot remember telling Walker that but I think I must have done.

He did not at that time tell me who the other directors would be.

He said my chief job would be to see to the money, to safeguard the money. He said there would be a fair amount of money at the bank.

He did not then mention who the Editor would be.

This would be some time shortly before September 1928.

I saw him 2 or 3 times in all before a meeting at Elman's Office.

I arranged with Walker that I should be a director of the Company and I was to receive £100 a year.

I did not then know Walker's address or anything about him.

At one of the interviews Walker told me the brother in law of the Solicitor to the Company would be one of the directors.

About 12th September I attended a meeting at Elman's Office at 27, Lincoln's Inn Fields. Mr. Paris, Mr. Elman, Mr. Osborne, the Secretary, were present. I think Mr. Moncrieff was there.

Klein was not present.

Mr. Walker explained that he was going to start a paper and that Mr. Paris and I were to be the 2 directors,
202 that I was to receive £100 a year, and Mr. Paris the same, and I believe it was then that Walker said I was to be the Editor of the paper. The name of the Company was to be Broad Street Press Ltd.

I was allotted 1,998 shares at that meeting.

I had not applied for those shares.

I paid no money for those shares.

I don't know if any money was ever paid for them.

I don't think I ever inquired.

5,000 shares were allotted at that meeting altogether.

I continued in the employment of Newman Williams & Co. as a Clerk.

At lunch time I used to go to the office of J. Wise at Broad Street Place and I used to wait for Mr. Moncrieff who would bring cheques for endorsement and sometimes

cheque books to be signed up in blank by me, having already been signed by Paris.

I was the Editor of Broad Street Press. In fact I had nothing whatever to do with the running of the paper. I never wrote any articles for it. I did not know who was the real Editor of the paper. The name of the paper was "The City News."

I would sometimes see Mr. Walker when I called at J. Wise's Office at Broad Street Place, also sometimes Mr. Spellen. I think I saw the accused J. Wise there once or twice.

Moncrieff paid me my director's salary weekly.

Before the last 5 or 6 months of the existence of the Company, my work for the Company took about 5 minutes a
203 day. Sometimes there would be piles of cheques for signature, but usually it took 5 minutes or so a day.

I knew nothing of the working or management or business of the Company. I took no part in it.

My salary was increased to £4 a week, and later to £6 a week.

I saw the paper weekly at first, but later I did not get it unless I asked for it, and then I had to wait so long that I often bought one.

Later the title of the paper was changed to "Finance," the Editor then being Norman D. Spencer. I was not consulted about the change of name or the change of Editor. I never discovered who Norman D. Spencer was.

I used to ask Moncrieff now and again how the Company was prospering.

It came to my knowledge that the Company were buying and selling shares.

During 1930 instead of going to see Moncrieff daily I used to go and see Walker at an office in Copthall Avenue daily at lunch time. Walker told me to ask for him there in the name of Guest.

I signed and endorsed cheques again there.

Usually the cheques had been for small amounts, 5/-, 15/- or 30/-. One day in the spring of 1930 I noticed the cheques were for larger amounts.

I said to Walker then: "Do you deal in shares?"

He said, "Yes," and said they'd made a lot of money for clients, subscribers of the paper, and he said, "I'll show you today's mail."

He brought in a number of letters and I read some of them,

thanking the Company, for money made by the Company for clients.

The cheques were for hundreds and thousands of pounds.

At Walker's office in Copthall Avenue I think I saw the accused Spellen once or twice.

That course of business went on through the summer of 1930.

I know 15 Copthall Avenue.

I went there about the end of October 1930 on a telephone message. I saw the shorter of the two Greens there—

204 B. Green. He met me and took me there. I saw the accused Newbery in the office doorway. I did not speak to him.

In the room I saw another man, in an inner office, an elderly man. He handed me some lists, with share numbers, allotment sheets, and asked me to initial the allotment sheets.

The allotment sheets are produced to me, EXHIBIT 144, all initialled by me.

They are dated various dates from July 2nd onwards. I had not seen them before October. I put the dates on them in consequence of something I was told.

The allotment sheets are all in respect of Vulcan Copper Mines.

I initialled those sheets at that office in October.

On that occasion I also saw these letters in Exhibit 56 relating to Vulcan Copper Mines also dated various dates from July to October 1930.

I signed those letters over the stamps. They were already complete, except for signature. They are all on Broad Street Press notepaper.

At that time—October 1930—I cannot say if Broad Street Press still had offices.

205 Other lists were looked for that meeting, but they weren't there, and the elderly man asked me to go back the next day. I forgot about it and did not go.

About a week later I went to the office in 15 Copthall Avenue again—alone. I saw a clerk. The name on the office was African "something or other" Corporation. I went there because of forgetting to go the day after the meeting. No allotment sheets were there and I did nothing.

On or about the day I signed the allotment sheets I went to another office at Broad Street House, and there I signed some letters on Broad Street Press paper. That was at

Green's request—B. Green. I left the letters there, relating to shares in either Rhodesia Border Mining Corporation Ltd. or Asbestos Holdings Trust Ltd.

At 15 Copthall Avenue I also signed some letters relating to another Company, either Rhodesia or Asbestos.

Some of the letters in Exhibit 140 are letters I signed at 15 Copthall Avenue and relate to Rhodesia Border Mining Corporation.

In the course of my duties I met Klein. Exhibit 16 is his photograph.

I first saw him in the Autumn of 1928, and saw him after that casually in the street and once or twice in the offices of Broad Street Press and 2 or 3 times at 42 Copthall Avenue. I never received any instructions from him in regard to Broad Street Press.

I saw Spellen from time to time at the offices of Broad Street Press sitting at a desk or coming out of a room.

I believe I have seen J. Wise at the office of the Company, once or twice.

The first time I saw Elman was at the meeting at his office on October 12th. I saw him at most of the meetings of the Company after that. I never saw him at the offices of the Company.

Looking at Exhibit 65, bill of costs as to certain actions, one *A. S. J. Osborne* v. *Truth Publication Co. Ltd.*

I knew nothing at all about that action. I did not know that action was being taken in my name against the Truth Publication Co. Ltd. I was not consulted in any way.

206 I knew nothing about any of the other actions referred to in Exhibit 65. I was not consulted as to any of them.

This is the original minute book of Broad Street Press Limited. Exhibit 64. The minutes are signed by me.

The minutes of 14th May 1930 records the appointment of Reid Sharman & Co. as Solicitors to act for the Company in consultation with Mr. Elman. I was never given any reason for that.

I was never asked to give my views on any matters of the Company.

The minute of 13th October 1930 refers to the sale of the Company to Throgmorton Press Ltd. I saw the draft agreement for the sale. I was not consulted as to the sale of the business. I don't think I signed that minute on the day of the

meeting, but I think I signed it at the next meeting. I sealed the agreement.

Later on I saw Mr. Levy at 27 Chancery Lane and at a meeting of the Company on 27th October 1930 it was resolved to go into voluntary liquidation. Elman is not recorded in the minute as being present.

I attended a meeting at Winchester House on 29th October.

Klein never attended any of the meetings of the Company.

The minutes in Exhibit 65 do not fully state all the persons present at the meetings. Walker was sometimes present, but his name is not in the minutes.

207 When my salary was raised Mr. Walker said he would give me a rise and he did so. I did not perform any more onerous duties. He was a generous man

I did not pry into the affairs of the Company.

In the cover of Exhibit 97 "The Stock Exchange, its methods & Praetice," is a compliment slip bearing my name as Editor. I had nothing to do with compiling that book and I did not know that slip was being used in that book. I first saw it sometime last year and I got them to give me a copy.

I did not know that Broad Street Press Ltd. were employing canvassers to go round selling shares.

I knew nothing at all about the Vulcan, Rhodesia or Asbestos Companies.

It did come to my knowledge that the Company were selling large numbers of shares in those Companies.

I carried out my director's duties in the clerk's office. I heard of the sales of those shares in the Clerk's office.

The circular Exhibit 102 as to Asbestos shares purports to bear my stamped signature. I did not know that such circulars were being disseminated. I did not know anything of the circular letters Exhibits 108 and 110 or of Exhibits 103 and 104. I knew nothing of any circular letters being sent out.

After the meeting at which Mr. Levy was present, I went to 2 Broad Street Buildings but on what I was told I did not go to my usual room.

I knew nothing about the assets of the Company.

In connection with the winding up of the Company I acknowledged receipt of the duplicate forms for prepara-
208 tion of the statement of affairs and I signed an application for leave to incur expense.

In the file Exhibit 102 I am described as a journalist. I have never been a journalist. I never authorized that description of myself.

The meetings of the Company were generally held at Elman's office. I cannot recall anybody other than Walker as being present and not recorded on the minutes.

ALBERT SIMON JOSEPH OSBORNE.

12 Feb. 1931. ALBERT PARIS on his Oath saith:—

I live at 76 Homeleigh Road, Stamford Hill.

I am the brother-in-law of the accused Elman.

I became a director of Broad Street Press Ltd.

During the summer of 1928 I was introduced to a Mr. Walker, I saw him 3 times before I became a director.
209 The third time he told me he was forming a Company to run a newspaper and he wanted me to be a nominee—a director; and I agreed.

He said I would get £100 a year. I was then employed by Sparklets Ltd. as a traveller.

I was introduced to Walker in the lounge of the Regent Palace Hotel.

I did not ask Walker why he was choosing me as a director. I had only seen him twice before.

He told me I would not control the Company—but only sign cheques and attend meetings.

He told me it was a usual thing to have nominees as directors. He said he was going to run the Company.

I knew I was to have a co-director.

I attended a meeting at Elman's office—at which I was allotted 3,000 shares in the Company—Broad Street Press Ltd. I did not pay for those shares. I had not applied for them. I knew nothing about them.

I carried out the duties of director as outlined by Walker. I signed blank cheques. The cheque books were sent to my home and sometimes sent on to me when I was travelling in the provinces.

I did nothing beyond signing blank cheques and attending meetings.

I never went to the offices of Broad Stret Press Ltd. because I was never asked to go.

Having signed the blank cheques I would send them back to the Company's address at Broad Street Buildings.

I received my salary—it was sent on to me each week.

I knew nothing at all about Companies.

I never made any inquiry about the Company or its business and was never told anything about it.

210 I attended meeting of the Company at the offices of Elman at Lincoln's Inn Fields.

I have seen before a book like Exhibit 64 which the Secretary Mr. Osborne—had. I never looked at it.

Beyond those persons stated in the minutes as attending the meeting—Mr. Walker attended most of the meetings. His name is not recorded.

There was no talking at all at the meetings, except when Walker was there. When he was there Walker did the talking. When he was not there we simply passed the resolutions on the agenda which had been communicated to us by Broad Street Press Ltd.

Generally Mr. Osborn (director) Mr. Osborne (Secretary) Walker & Elman and I were present at the meetings.

If Walker wasn't there that left the 2 Osborns, Elman and I. There was no talking about the business of the Company.

The Secretary was a clerk employed by Elman.

I never met any other persons than those I have mentioned in connection with the Company.

The paper published by the Company was sent to me every week. When it was the "City News" I noticed the Editor was stated to be A. S. J. Osborne. I thought he *was* the Editor. I never inquired.

Court.

He was my co-director. We only met at the meetings.

I understand he was the Editor.

Further Examined:

I saw the book "Stock Exchange, its Methods & Practice." I noticed that A. S. J. Osborn was stated to be the editor of it. I never inquired about it.

I never saw the Company's bank pass book.

I never saw any books of the Company except the minute book.

I knew the business of the Company was the publishing of a financial newspaper.

211 I did not know the Company was selling shares until the end of last year when the writs were coming in—about October 1930. Then I realised there were actions as to share transactions. I went to see Reid Sharman & Co. and sent the writs on to them. I was served with some of the writs.

I was surprised to receive the writs.

I mentioned it to Elman; at his flat. I told him I was taking them to Reid Sharman and the matter was left there. I understood that at that time Reid Sharman & Co. were solicitors to the Company—and not Elman.

I look at the minute of 14th May 1930. It is clear from that that Reid Sharman & Co. were appointed to act in consultations with Elman. I was present at that meeting.

I cannot recollect whether Elman was present at the meeting of 27th October 1930.

I did not know that Broad Street Press Ltd. were selling shares in the Asbestos, Rhodesia or Vulcan Companies.

I never authorised any payments to Elman in respect of any matters relating to the Company.

All the cheques I signed were in blank—when I signed them.

I never knew that Elman was defending actions which had been brought against the Company: I never authorised that.

212 I knew about the libel Action against "Truth." I did not authorise it and I was not consulted about it.

ALBERT PARIS.

213 12 Feby. 1931. ALFRED PERCY SPRANGE, on his Oath saith:—

I live at 122, Lyttelton Road, Golders Green.

I am not now in employment.

In July 1930 I was temporarily employed by the African Construction Corporation Limited, 15, Copthall Avenue. They had no office and I had a seat in a room of T. W. Webb & Co. Ltd. at 5, Moorgate Buildings.

Mr. Brett and Mr. Smith (Secretary) were connected with T. W. Webb & Co.

Mr. Sterling was connected with the African Construction Company.

I saw the accused Newberry daily at 15, Copthall Avenue.

At 5, Moorgate Buildings I saw him about five times only.

I became a director of Vulcan Copper Mines Ltd. Newbery asked me to be a director. My co-director in England was a Mr. Bonnard. My remuneration was £100 a year, which was paid by the Company. I took some part in the business of the Company the only part of the Company's business that was operating was the drawing and issue of certificates. I took part in that.

Exhibit 58 an agreement with Permanent Investments Ltd. bears my signature. I was called to 15, Copthall Avenue on 27th June to sign it, by either Mr. Brignell or Mr. Sterling. I saw there Mr. Bonnard and I think Mr. Brignell and Mr. Sterling were both there. Mr. Ozanne was not there. I am not sure if Newberry was there.

15, Copthall Avenue were Newbery's offices.

I knew nothing about the properties mentioned in Exhibit 58.

The first thing I knew about the matter was when I was asked to sign the agreement.

The consideration was £12,000 cash and some shares.

The Company had not got £12,000 at that date. The Company's banking account had not then actually been opened.

In due course the names of the allottees were supplied by Broad Street Press Ltd. I took part in alloting the 214 shares, from about 3rd July 1930. We had on 30th June. received application for 66,000 shares from Broad Street Press Ltd. and £33,000 by their cheque.

Exhibit 144 are the allotment sheets.

Allotments continued down to sometime in October, about the 20th.

Application was never made to the Stock Exchange for permission to deal in the Company's shares.

The Company never conducted any business that I am aware of.

I took no part in the preparation of the circular letter, Exhibit 104, as to Vulcan Copper Mines. I never authorised it. As far as I know no particulars were ever furnished by Vulcan Copper Mines Ltd. to Broad Street Press Ltd.

I know Mr. S. Brignell. He is employed at 15, Copthall

Avenue. I don't know by whom. I should say the real person at 15, Copthall Avenue is Mr. Newbery.

In September 1930 I took part in the preparation of allotment sheets for the Rhodesia Border Mining Corporation Ltd. at the request of, I believe, Mr. S. Brignell.

Produced, EXHIBIT 145, are the allotment sheets.

I had no connection at all with the Rhodesia Company. I knew nothing at all about that Company.

I was not paid anything additional for that. I took instructions from S. Brignell. He worked at Throgmorton House, 15, Copthall Avenue. I was at 5, Moorgate Buildings.

I prepared those allotment sheets from the Counterfoils of the Certificates, because the original lists had been cut about owing to Broad Street Press having sent in so many alterations.

I wrote a great many of the Rhodesia Certificates and sealed them. They had then already been signed by the directors.

I think Mr. Hill was present at the sealing, but not often.

215 I entered up part of the share ledger—from A-E—upon Mr. Brignell's instructions.

I got the money for the stamp duty by cheque drawn on Permanent Investments Ltd. by Newbery. I cashed the cheque and bought the stamps. The cheques were for between £100 and £200.

I have been to 25, Victoria Street, the registered office of Vulcan Copper Mines and to Throgmorton House, 15 Copthall Avenue where the Company's business was transacted. No business was transacted at 25, Victoria Street.

I wrote up part of the share ledger of Vulcan Copper Mines, from L to Z. Mr. Leme wrote up the rest. He is employed at 15, Copthall Avenue. I wrote up my part at 5, Moorgate Buildings from the nomination lists handed to me by Mr. Brignell. The lists did not differentiate between cash shares and vendors shares and there is no distinction shewn in the two ledgers.

Produced, EXHIBIT 146, is the journal of the Vulcan Company. It shews the allocation of shares. I entered those particulars early in November from information supplied to me either by Mr. Sterling or by Mr, Norris.

Mr. Norris is a Chartered Accountant and auditor for several companies round about 15, Copthall Avenue.

I have known Newbery about 30 years. I was first em-

ployed by him in 1899 or 1900, and until 1916, and then again in 1929 until about three weeks ago.

My qualification as director of the Vulcan Company was 100 shares, value £50. They were allotted to me on 30th May by Permanent Investments Ltd. the Vendors.

I saw a draft of the agreement, Exhibit 58, before 27th June. I don't know whether Sterling or Brignell shewed it to me, and one of them asked me to sign the fair copy.

Referring to the minute of 19th June 1930 in the Minute Book, Exhibit 56, no such Meeting as there referred to was ever held.

In Exhibit 56 is a minute of a meeting on 27th June 1930 at 25, Victoria Street. No meeting took place at that address.

But a meeting took place at 15, Copthall Avenue, at 216 which Bonnard and I and Sidney Brignell were present.

I am not certain if Mr. Sterling was there. That is a minute of what took place at that meeting. The minutes in the minute book are in two handwritings. I think Mr. S. Brignell wrote some of it, and the Secretary, Mr. Smith, wrote the rest.

The minutes were not written up at the time of the meeting. Records were kept at the time, but the minute book was all written sometime early in November.

Neither of the meetings mentioned in the document on the file Exhibit 47 headed "Special Resolutions, Vulcan Copper Mines Ltd." were ever held at 80, Coleman Street. But informal meetings took place at 15, Copthall Avenue upon the dates mentioned.

I signed that document at the request of, I believe, Mr. Brignell.

Mr. Newbery told me it was necessary to increase the Company's capital in order to take over additional mines.

As director of the Vulcan Company I have never come across any document shewing title to any properties, in Rhodesia or S. W. Africa. I asked Mr. Newbery about it and he fixed a day when he would shew me plans and reports at a round table Conference. That was in September or Oc-
217 tober or later. That was after some of the shares had been issued. Up to then we knew nothing except what was stated in the agreement. I did not know that the specified properties were 1,000 miles apart. The round table conference was never held.

Cross-examined for Newbery:

Newbery never put documents of title on the table or shewed any to me.

On 27th June .Vulcan Copper Mines had no money at the bank.

The agreement provides for completion on 15th August 1930. At that date the Company had round about £28,000 at the bank, so that there was plenty of money to complete.

Completion was postponed because there was a question of amalgamation with some other companies.

That £28,000 was not added to afterwards, but that sum remained to the credit of the Company at the bank until the Official Receiver took it over.

In some cases Brignell gave me cheques for the stamps, and on two occasions Newbery did so.

At Victoria Street the Company had only a staff of two, quite insufficient to deal with these transfers, which were therefore dealt with at 15, Copthall Avenue.

Mr. Brignell paid me my salary.

I never heard that I was employed by the Messanine Syndicate. I was paid sometimes by cheque and sometimes by cash.

The cheques were those of the African Construction Corporation, not of the Mezzanine Syndicate.

Re-examined:

The £28,000 was part of £33,000 paid by Broad Street Press.

ALFRED PERCY SPRANGE.

218 18th February 1931. ALFRED HENRY BONNARD on oath saith:

I live at 73, Inverness Terrace, W. 2.

I am a Commission Agent in mining properties.

I know the accused Newbery for the past 20 years at least. His offices are at 15, Copthall Avenue, where he carries on the business of promoting companies, mainly in mining.

I have seen names of companies on his office door, such as The Suvaroff, the African Construction Co., and the Nile Valley, General Mining and Finance.

I have not seen Newbery's name on the door.

In March 1930, I had a conversation with Newbery about some property in Rhodesia and another property in the Lomogundi district as to which I had also spoken to him previously. He told me he had been engaged in negotiating the purchase of the Rhodesia property for some time and that he wanted me to be a director of a Company to carry on an enterprise in connection with the two properties, to be called the Vulcan Copper Co. and I became eventually a director of the Vulcan Copper Mines Co. Ltd. I agreed to become a director somewhere about March 1930.

I was shewn copies of documents about the properties by Newbery, especially relating to the Rhodesia property. I had knowledge as to the S. W. Africa property.

My renumeration as director was £150 a year at first.

I knew that Mr. Sprange would be my co-director. I had recently met him, but very rarely.

I attended Board Meetings of the Company.

My director's qualification was 100 shares, which were allotted to me. I don't know who paid for them. I did not.

The board meetings were held mainly at 15, Copthall Avenue. No board meetings were held at the registered of-
219 fices, 25, Victoria Street. It was more convenient to hold the meetings at 15, Copthall Avenue for purposes of allotment.

EXHIBIT 56 is the minute book of the Company. The meetings are all recorded as taking place at 25, Victoria Street. Twenty or more of the minutes are signed by me. I did not sign those minutes on the dates when they purport to be signed. I signed them in November, on two or three dates in November, I think.

Mr. Sprange or Mr. Brignell brought the minutes to me for signature. I think it was Mr. Sidney Brignell.

The minute book, Exhibit 56, was not in existence at the date when meetings were held prior to November, as far as my memory goes. The minute book came into existence in November. It was compiled from the sheets of paper which are now in the minute book, Exhibit 56. I did not sign all of those sheets of paper at the time of the meetings, they were signed, most of them, when the minute book was prepared—in November.

Some of the minutes were prepared by Mr. Brignell, some by Mr. Sprange and some by the Secretary, Mr. Smith. I had very little to do with the clerical work.

I would be summoned to meetings by telephone, by Mr. Brignell or a Clerk in the office at 15, Copthall Avenue, Mr. S. Brignell was not an officer of the Company.

Mr. S. Brignell, Mr. Sprange and I would be present at the meetings.

The capital of the Company was £200,000 in 10/- shares—later increased to £600,000 in 10/- shares in July 1930, as shown in the file. Exhibit 47. I did not know the capital of the Company was being increased. I did not know that it had been increased until the new shares were being issued.

I cannot say who told me of the increase of the Capital of the Company, it may have been by Brignell, Newbery or Sprange. I had not been consulted.

By Court:

I did not receive a summons to attend the meeting at which the capital was increased.

I did not express surprise when I was told of it.

I left the clerical work of the Company to the others.

Further Examined:

The only minute of the Company bearing on it is under date 3rd July, 1930. There is no record in the minute
220 book of any resolution of the Company for the increase of capital.

By Court:

I have been director of other companies, but not many. I did not pay much attention to the work being done at 15, Copthall Avenue. I had perfect confidence in what they did.

Further Examined:

I think I was shewn a draft agreement between Permanent Investment Ltd. and the Vulcan Company. I believe by Newbery or S. Brignell.

I took no part in those negotiations.

I thought very highly of the property and that the purchase price was very reasonable. I think very highly of the property now. I mean of the Rhodesia property and the Lomagundi property in S. W. Africa.

I never saw any document shewing actual title to the

properties while I was a director of Vulcan Copper Mines Ltd.

I signed the Statement of Affairs of the Company in which the property is valued at £6,000, with an explanation appended to the Statement.

221 The Company had 6 months previously agreed to pay £512,000 for those properties.

I did not know how the consideration for the purchase had been arrived at. I did not raise any question as to the purchase price when I saw the draft agreement.

I signed the agreement, EXHIBIT 58.

I did not myself take any steps to find out whether the Vendors were the actual owners of the properties they were selling to the Company. I trusted Mr. Newbery.

By Court:

If I had put any of my own money into this Company, I might still have taken another man's word, but as a rule one would inquire and satisfy oneself.

Further Examined:

I knew there was a considerable distance between the two properties. I did not know there was a desert between them. No independent report on the properties was obtained by the Company. I had seen reports on the dumps of the Rhodesia property. Mr. Newbery shewed them to me, and a year before I had seen one which had come from the Lomagundi mine.

The agreement, Exhibit 58, states that particulars of development plans of working, details of mineral values, and reports of mining engineers are available. I did not see any such documents, but I had discussed them with Mr. Pearson a year before. I believe the reports are now in the hands of the Board of Trade.

I have seen two days ago a report made by Mr. Pearson which is now in the hands of the Board of Trade, sent to them, I believe, by Mr. Newbery's Solicitor.

When the agreement was entered into, 27th June, 1930, I had an idea how the purchase price was to be paid, the Company had nearly £30,000 in the Bank.

222 I see in Exhibit 56, a minute of 4th July resolving that Barclays Bank be appointed bankers to the Company.

When I signed the agreement the money was not in the bank but Newbery told me he had made arrangements to pay that money into the bank. I did not inquire where the money was coming from. He made his arrangements and £33,000 was paid into the bank a few days afterwards. I had never known Newbery fail on an obligation and I was definitely told so.

There was nothing for a director to control at that time. There was nothing but the inauguration of the Company.

At that time, 27th June, I had not received any remuneration as director.

I received £50 for two quarters. £25 for each of two quarters, or it may have been £37.10.0.

I saw and endorsed the cheque for £33,000, EXHIBIT 60. Mr. Newbery brought it to me. It is drawn by Broad Street Press. I did not ask Newbery about the cheque. I did not know the money was to come from Broad Street Press. I endorsed the cheque and handed it to Mr. S. Brignell to pay into the Company's account.

As to this letter, EXHIBIT 61, from Permanent Investment Ltd. to Vulcan Copper Mines Ltd. nominating Broad Street Press to receive 1,000,000 shares. I did not see that letter.

I do not know who provided the money for the registration of the Vulcan Company.

I signed the cheque, Exhibit 57, for £830 dated 9th July, drawn in favor of Klein. I believe that was in respect of the registration of the Vulcan Company. I did that by 223 direction from 15, Copthall Avenue. Mr. Newbery or somebody in the office told me that we were indebted to Klein in that sum for expenses of registration. No voucher or receipt was shewn to me when I signed the cheque, Exhibit 57. Completion has never taken place.

I don't know who prepared that agreement. I think the work was done at 15, Copthall Avenue. I don't know where the offices of Permanent Investments were. I've met Mr. Ozanne there, at 15, Copthall Avenue. He and Newbery were the only two directors of Permanent Investments Ltd.

As far as I know I had not seen the nomination letters inside the cover of Exhibit 56, before I saw them at the office of the Official Receiver.

The Vulcan Company did not to my knowledge carry out any work on the properties in Africa.

I know nothing of the two directors of the Company in Africa apart from their names.

No one was sent out by the Vulcan Company to investigate the properties, but someone was sent out by the Permanent Investment Co., that was Mr. Pearson, and I believe small cheques were sent to Mrs. Pearson on his behalf.

I took no part in making out the share certificates. I signed them at 15 Copthall Avenue, except as to a few which I signed at Sprange's office. Once or twice I saw the seal of the Company affixed. We empowered Brignell to affix the seal.

Beyond the conterfoils in the cheque book, I saw no accounts of the Company. I neved inquired if any books were kept. No auditors were appointed.

When I signed share certificates I did not know whether they were in respect of cash or vendors shares.

224 I never saw the circular, Exhibit 104. I never authorised Broad Street Press Limited to send out that circular as to the Vulcan Company.

Cross-Examined for Elman

I never saw the accused Elman. He never acted in any way for the Company.

ALFRED HENRY BONNARD.

18th February 1931. ARTHUR FREDERICK SMITH on oath saith:

I live at 65, Powerscroft Road, Clapton.

I am an unestablished clerk in the Civil Service.

I know a Mr. Sidney Brignell very well. I knew him in 1928, and through him I became a director of T. W. Webb & Co. Ltd. I took no active part in the business of the
225 Company. I was merely a nominal director and only signed cheques, occasionally bank transfers, and, I think, also share transfers at 15, Copthall Avenue.

I never attended a board meeting of the Company. I knew nothing whatever of the business transacted by the Company.

I resigned my directorship about November 1930 after attending at the office of the Official Receiver in the matter of the Vulcan Company.

In March 1930, Mr. Sidney Brignell asked me if I would accept the secretaryship of a Company, which I later found to be the Vulcan Copper Mines Ltd. The appointment was offered to me as a nominal and temporary one.

I signed the covering documents for the registration of the Company at 15, Copthall Avenue.

The next thing I did was assisting in the allocation of the share certificates. I held no shares myself. I did not keep the register of members.

In July, I attended the office of the Company at Brignell's request and signed the authority for opening the Company's banking account. I used to meet Brignell 3 times a week and he would tell me if I was wanted at 15 Copthall Avenue. I got all my instructions from Brignell. I did not keep a minute book. At a later date, on 10th November, I wrote the minutes of three meetings in Exhibit 56, at Brignell's request, *i. e.* those of 3rd, 4th and 7th July. I copied them from typewritten sheets which Mr. Brignell handed to me.

I am reported as being present at the meetings in those minutes: I was not so present.

I did not know until the winding up proceedings in November of any resolution for increase of the capital of the Company.

I never attended the registered offices of the Company at 25, Victoria Street. All I did was done at 15, Copthall Avenue.

I never saw any incoming correspondence with the Company nor was I consulted upon any.

226 I never saw or heard of the letter, Exhibit 61, nominating Broad Street Press to receive 1,000,000 shares.

On several occasions I signed letters to Broad Street Press relating to their nominees, they were brought to me sometimes by Mr. S. Brignell and sometimes by Mr. Stirling.

I remember signing some in October bearing dates in June or July.

I signed blank sheets of the Company's note-paper. I may have signed a dozen.

In July I attended at 15, Copthall Avenue on Brignell's instructions and signed share certificates, some already prepared and some in blank. The seal of the Company had not been affixed when I signed the certificates.

I never saw the agreement, Exhibit 58, until 10th November at the Examiner's office.

I never saw any document of title to any properties in Africa.

Sometime in July or beginning of August I signed six cheques, one to Broad Street Press, the others in blank. The cheque to Broad Street Press was, as far as I can remember, for £3,300.

I never kept any books in connection with the Company.

On 7th November with Mr. Sprange I went to 15, Copthall Avenue and saw Mr. Newbery, Mr. Brignell and Mr. Stirling. That was after I'd seen the Official Receiver.

227 Newbery asked generally what had happened and Mr. Sprange and I reported to him what had happened and told him that they were contemplating winding up the Vulcan Company. We discussed the effect of that, and as to whether the assets of the Company should be removed to Buluwayo. I knew there was £28,000 at the bank. Mr. Sterling and Mr. Newbery took a principal part in the discussion.

ARTHUR FREDERICK SMITH.

18 Feby 1931. JESSE HILL on his oath saith:

I live at 9, Spring Street, Hyde Park, W. 2.

I am a mining engineer.

I have known the accused, Newbery, five years.

I became a director of Rhodesia Border Mining Corporation Ltd. at his invitation.

228 My remuneration was to be £200 a year. I held 100 shares. I don't know who paid for them.

My co-director was Mr. Harry Brignell and the Secretary was Mr. T. Beony.

There were two directors in Buluwayo whom I did not know.

The registered offices were at 80A, Coleman Street, E. C.

I received on account my remuneration one cheque for £50 for one quarter.

I did not know Mr. Harry Brignell before I became a director.

Exhibit 133 is the minute book of the Company. I don't know who kept that book.

No board meetings were held at the registered office of the Company, 80A, Coleman Street.

Meetings were held at 15, Copthall Avenue.

Several companies were housed at Newbery's offices at 15, Copthall Avenue. I can't give the names of any of them.

In Exhibit 133 is a minute of a meeting on 5th August at 80A, Coleman Street. No such meeting was held. The minute says I was present. That is untrue.

There is also a minute of a meeting on 6th August at 80A, Coleman Street. No such meeting was held there. No memorandum of agreement was produced at the meeting. The minutes of those two meetings purport to be signed by me. They bear my signature. I signed them sometime in October or November at the request of Mr. Sidney Brignell.

Several other minutes in Exhibit 133 are signed by me. I signed those altogether at the same time at 15, Copthall Avenue at the request of Sidney Brignell.

As to the agreement, Exhibit 132, I was never consulted as to that agreement between my Company and the Pretoria Mining Estates Co. Ltd. I knew nothing about that latter company.

I never saw any document shewing title to those properties in Africa. I discussed the matter with Newbery, who shewed me plans and reports and I had already seen
229 samples of one from the properties, shewn me by Newberry, he told me they were from the properties.

I did not know that the whole of the Vendors shares were alloted to nominees of Broad Street Press Ltd.

I never saw this letter, Exhibit 136, nominating Broad Street Press to receive 1,176,000 Vendor shares, nor this letter, Exhibit 137, of 15th August 1930 nor this letter, Exhibit 138, of 29th August 1930.

I never inquired as to the value of the properties in Africa. I signed the agreement because Mr. Brignell asked me to.

I made no inquiry as to where the consideration was to come from.

I knew nothing about the banking account of the Company. I signed cheques on the Company's account, cheques which had already been drawn. I signed share certificates in blank.

None of the business of the Company was transacted at the registered offices of the Company. It was all transacted at 15, Copthall Avenue.

I never saw this cheque, Exhibit 112, drawn by Broad Street Press in favour of my Company for £33,000.

I never in any way controlled the management of the Company. I do not know who did. My only interest in the
230 Company was my remuneration for my services, which were the signing of necessary documents, which I signed without making any inquiry.

I never discussed the affairs of the Company with my co-directors or with the secretary.

The Company came to an untimely end and we had no time to do any business.

JESSE HILL.

18 Feby 1931. HARRY BRIGNELL on his oath saith:

I live at 47, Londesborough Road, Stoke Newington.
231 I am a commercial traveller.

I have known the accused Newbery about four years.

I have a brother Sidney Brignell. I don't know who employs him. I know he is in the same office as Mr. Newbery at 15, Copthall Avenue, the offices as far as I know of the African Construction Company.

I became a director of the Rhodesia Border Mining Corporation Limited at the request of my brother.

I did not see Newbery about it.

My remuneration was to be £100 a year. I heard from my brother that I had been made a director.

I had 100 shares in the Company. I do not know who paid for them.

My duties mainly consisted of signing share certificates and blank cheques, that was at 15, Copthall Avenue, except as to a few share certificates which I signed at 5, Moorgate Buildings, the office of T. W. Webb & Co. Ltd.

I did not know the directors in Buluwayo.

Meetings did not take place as recorded in the minute book, Exhibit 133. I am recorded as present at meetings—that is untrue. I met the other people mentioned in the minutes at 15, Copthall Avenue, but not at meetings of the Company.

The agreement, EXHIBIT 132, was not produced at a meeting of 6th August as recorded in the minute book.

I do not know who wrote up the minutes in EXHIBIT 133.

I knew nothing of any such resolution as is mentioned in the minute of 18th August and I know nothing of the letter of 15th August, Exhibit 137, nor of the matters referred to

in the minute of 27th August, nor of the letter, Exhibit 136, of 25th August.

I have seen the agreement, Exhibit 132, before, after the winding up I had no knowledge of it at the time it was executed. I did not know where the consideration was to come from.

My brother shewed me several papers as to the properties in Africa. I took no particular notice. I don't think I saw any documents of title.

I see that the consideration in Exhibit 133 is £600,000 which my Company was to pay for properties in Africa.

232 I never saw any documents satisfying me that there were properties in Africa worth that sum.

At no time at all did I have any control of the management of the affairs of the Company. I can't say who did control the Company.

I signed the statement of affairs in the winding up of the Company in which the property in Africa was estimated to produce £6,000 with a note that in our opinion the potential value was much higher. I know nothing personally as to the potential value.

By the Court:

I can't say who first mentioned the figure of £6,000. It wasn't I.

We were at the Board of Trade, four of us, Mr. Hill, Mr. Sprange, Mr. Bonnard and I. No, it was only Mr. Hill and I and the Secretary. It must have been Mr. Hill who mentioned the £6,000. Mr. Hill said that was the figure that was given by the Vulcan Copper Mines.

Further Examined:

I knew nothing at all about the property in Africa.

HARRY BRIGNELL.

18 Feby 1931. THOMAS CAPEY BENOY, on his oath saith:

I live at 38, Fairfield Road, Bromley, Kent.

I am an accountant employed by J. Turner Norris, 19, St. Dunstan's Hill, Chartered Accountant, who audits the Ac-

counts of a number of companies at 15, Copthall Ave-
233 nue, including Mayblossom Mining Co. Ltd., Ranfontein Extension Co. Ltd. etc., African Construction Corporation, whose registered offices are at that address.

I have known the accused Newbery eight years.

In July 1930 I was asked by Mr. Sidney Brignell to become Secretary of a Company which turned out to be the Rhodesia Border Mining Corporation Limited.

I had known Sidney Brignell for eight years, as employed by the African Construction Corporation. Sidney Brignell was a clerk employed by Newbery.

I did not discuss my sercetaryship with Newbery.

I held no shares in the Company.

I signed the application for registration of the Company.

I did not then know Mr. Jesse Hill or Mr. Harry Brignell. I met them at 15, Copthall Avenue, not frequently.

I knew nothing of the two directors at Buluwayo apart from seeing their names.

As Secretary I did not have charge of the minute book. I only saw it, Exhibit 133, at the Official Receiver's office. I had nothing to do with compiling the minutes. I think Mr. Leme wrote them. I don't know when.

The registered offices were 80A, Coleman Street the office of a chartered accountant. I never conducted any of the affairs of the Company there.

I knew nothing about an agreement between the Company and the Pretoria Company.

I did not know of the sale of shares to Broad Street Press except that I signed some letters about it, Exhibit 13, is one of them.

I did not see the agreement, Exhibit 132, until the winding up proceedings. It is signed by Ozanne, director for the Pretoria Company. He is Mr. Newbery's agent in Guernsey.

I never saw any documents shewing title to any properties in Africa.

I signed the form for opening the banking account of the Company on 8th August 1930. A cheque for £33,000,
234 Exhibit 112, was paid in on 15th September. I endorsed that cheque and paid it in. I received it from Mr. S. Brignell, Newbery's clerk.

I did not see the letter, Exhibit 138, until the winding up proceedings.

I signed share certificates at 5, Moorgate Buildings, the office of T. W. Webb & Co. Ltd. and 15, Copthall Avenue. Some I signed in blank. I was rather busy. I did not know what they were for.

I have seen the Company's statement of affairs on the day it was signed by the directors. I prepared it in conjunction with my principal Mr. Norris.

He also prepared the statement of affairs of the Vulcan Company. I helped him.

I don't know how the figure of £6,000 was arrived at as to the value of the properties.

I did nothing in connection with the business of the Company except what I was told to do. I had no real knowledge as to what I was doing.

THOMAS CAPEY BENOY.

235 EXHIBIT 1.

15, Chondos Road,
Cricklewood.
N. W. 2.
13th August, 1928.

Mr. P. J. Groom.
119, Bishopsgate,
E. C. 2.

Dear Sir,

I confirm my telephonic conversation with you whereby I offered you £250 per annum for the offices in Broad Street Buildings, and trust you will see your way clear to accept this offer.

In order to expedite the matter I am giving below three references:—

Barclay's Bank Ltd.,
311, High Holborn,
W. C.

Burnett L. Elman (Solicitor)
27, Lincoln's Inn Fields,
W. C.

Sydney Savile Esq.,
42, Copthall Avenue,
E. C.

Your early reply to my offer will oblige.

I am,
Yours faithfully,
(Sgd) J. WISE.

Mr. Kroppy: And also on the further ground there is no evidence in the case to show that the Live Poultry Dealers Protective Association was organized by any of the defendants in this case to carry on the conspiracy alleged in the amended petition, or that it was organized in furtherance of the conspiracy alleged in the amended petition.

Further, there is no testimony in the case to show any connection between the Live Poultry Dealers Protective Association, and any of the defendants named in this action.

The Court: Is that Live Poultry Dealers Association the one for which Mr. Mintzer is acting now?

Mr. Rice: No, your Honor. The Live Poultry Dealers Protective Association is the association that intervened between the periods when the Chamber of Commerce ceased operation and the period when the new association represented by Mr. Mintzer commenced. There is some overlapping of periods.

[fol. 320] The Court: Objection is overruled. It is admitted.

(The same was received in evidence and marked Government Exhibit 26.)

Mr. Rice: If your Honor please, I had understood Mr. Kaufman wished to have the Government stipulate that the assignment contracts listed on Exhibit 26 were made one year prior to the date of expiration indicated on the right-hand column.

Mr. Kaufman: That is correct.

Mr. Rice: Now, as I say, the Government is willing so to stipulate. Exhibit 27 for identification represents a list of the markets which made assignments of ten cents per coop owing from the New Jersey Coop Company and Bernstein & Sons, Incorporated, to the Live Poultry Dealers Protective Association, for the period commencing November 16, 1928, and continuing until November 15, 1929, leaving out the legend now at the top of that page.

The Court: The same objection?

Mr. Kroppy: Yes, sir.

The Court: Same ruling. It is admitted.

Mr. Kroppy: Exception.

(The same was received in evidence as Government Exhibit 27.)

Mr. Kaufman: Do I understand you then to say that during this period there was an overlapping in that there were two assignments, one to the Chamber of Commerce and one to the Live Poultry Dealers Protective Association?

Mr. Rice: Yes. Exhibit 28 for identification represents the amounts of the payments from week to week by members of the Live Poultry Dealers Protective Association of New York and vicinity to that association by virtue of the assignments of the ten cents a coop owing from the New Jersey Coop Company and Bernstein & Sons. This covers the period from December 3, 1928, to and including September 10, 1931. The dates of the respective payments made by the New Jersey Coop Company and Bernstein & Son, to the Live Poultry Dealers Protective Association of New York and vicinity is indicated opposite each payment.

[fol. 321] The Court: Any objection?

Mr. Kroppy: Same objection.

The Court: Same ruling. Received.

Mr. Kaufman: Exception.

(Government Exhibit 28 for Identification was received in evidence as Government Exhibit 28.)

Mr. Rice: Exhibit 29 for identification is a list of the markets with their addresses, who made assignments of ten cents a coop owing from the New Jersey Coop Company and Bernstein & Sons to the Live Poultry Slaughter House Association for the period of one year commencing September 8, 1931, to September 7, 1932. * * * I offer Exhibit 29 in evidence without the notations which I have read.

Mr. Perlman: That is right. We understand whatever is stricken out is not in evidence. Before that is received, may I ask Mr. Rice to tell me please, if he will, whether he contends that the formation of the Live Poultry Slaughter House Association is a part of the conspiracy of these defendants to continue a violation of the Sherman Anti-Trust Law?

Mr. Rice: I decline.

The Court: Is there any other objection?

Mr. Perlman: I object to it on the ground there is no proof at this time that the Live Poultry Slaughter House

Association is in any way connected with these defendants or is organized and doing business in furtherance of the conspiracy.

The Court: Overruled. Proceed.

Mr. Perlman: Exception.

(Government Exhibit 29 for identification was then received in evidence as Government Exhibit 29.)

Mr. Rice: Exhibit 30 for identification represents the total amounts of the weekly payments of the ten cents per coop to the Live Poultry Slaughter House Association by Bernstein & Sons, Inc. and New Jersey Coop Company, covering the period from September 17, 1931, to and including November 19, 1931.

The Court: Any objection?

Mr. Kaufman: I object to it on the ground that it is im-[fol. 322] material and irrelevant and no proof of the conspiracy alleged in the amended petition.

Mr. Kroppy: I make the same objection I made before to the admission of the other exhibits.

Mr. Perlman: Again it is a duplication. Exhibit 29 lists assignments of Live Poultry—I see these are payments as to assignments.

Mr. Rice: Yes.

Mr. Perlman: The same objection we made to the others.

The Court: The objections are overruled. Received.

Mr. Kroppy: Exception.

(The same was received in evidence as Government Exhibit 30.)

Mr. Rice: Exhibit 32 for identification is a list of markets classified according to the various districts of the city who made assignments of ten cents per coop owing from the New Jersey Coop Company and Bernstein & Sons to the Greater New York Live Poultry Chamber of Commerce for the period from November 16, 1926, to and including November 15, 1928.

The Court: Any objections?

Mr. Kroppy: I make the same objection I made to the admission of the other exhibits.

The Court: Overruled. Proceed.

Mr. Kroppy: Exception.

(Exhibit 32 heretofore marked for identification received in evidence.)

Mr. Rice: It is stipulated that Exhibit 29 be considered to include all of the markets on Exhibit 26, excepting those where on Exhibit 26 it appears that the markets' assignment expired prior to September 8, 1931.

[fol. 323] (The following testimony of Government's witness, Samuel Garber, given at a former trial on October 29, 1929, was read in evidence pursuant to stipulation, subject to objection and exception as to its competency and materiality:)

Direct examination.

By Mr. Rice:

The Witness: I have been in the poultry business seven years. I was associated in business with Harnett & Son in 1928. While I was in business with Harnett I bought poultry in Baltimore and Philadelphia. I was not a buyer in the Washington Market. I had a conversation with David Hirshon about that time. It was about three days before the Passover Holiday in 1928. I told him, in the New York office of the Chamber of Commerce, he should give me permission to take stuff in Washington Market and he told me I couldn't get the poultry in Washington Market. That is the only conversation I had with him at that time, and then I went away to Baltimore.

I stayed with Harnett's firm about eight or nine weeks, and left it about May 10th or May 5th. Then I went away to my place to buy poultry. I had my own business 76 Prospect Place. I had a conversation with Hirshon before I left Harnett. About six days before I asked him he should give me poultry, I want to be in the same business, in the wholesale business. He said if I wanted I should go from the Harnett corporation, then he will give me stuff. He asked me to take $50 a week—there was three people there, myself, Jake Siegel, and Harnett, and he told me he give me a hundred and fifty dollars a week—fifty dollars for each—then he said that is not enough, then he said "You cannot get any poultry." He was going to give me the

$50 I shouldn't be in the poultry business but should be [fol. 324] back in my place and should pay six cents above the market. I told him I wouldn't pay six cents above the market but only four, it was killed in my store. Then he said "All right, I will talk it over to Rubin." Then Rubin came himself to my house and he said he will give it at four cents, and I went away from him to kill my poultry. I did not accept Hirshon's offer. I did not do any wholesale business after that. After the fire I went out. I did not get the $50 a week. That's all that happened at that time. I don't remember no more. They were picketing my store. At the time they were picketing my store, I had a conversation with Hirshon about that. I told him he should take away the pickets. He said if I will get out from the Harnett corporation and the wholesale business. I went out of Harnett's corporation and they stopped picketing my store after that. I did not recognize any of the people who were doing the picketing because I was too nervous. There was a whole lot of shochtim there. They were changed every two hours. I do not see anybody in this court room who was picketing my store. They were only shochtim with big beards.

I know Kalman Shapiro. He was there, he was talking to me. After that, Mr. Hirshon told me to buy from Rubin and I did buy from Rubin. It was when I was in the wholesale business with Harnett, he didn't sell it to me. He told me to go to my place, to Mr. Rubin. I tried to buy from Morris Gordon; I did not get any poultry there. Kalman Gordon, he is there, he told me he will give it to me, and he went in and said no, he won't give it to me.

These conversations with Hirshon and Gordon, they were about the spring of 1928. At the time that Hirshon and [fol. 325] Gordon told me to buy from Rubin, Rubin told me Washington Market is today 38, I must pay 42. If the market was 34, I pay 38. This was when I was in business for myself. I always had the same store and I got now the same store. I paid four cents above the market a few weeks. Then he started to charge me again five—six. Then I called to Mr. Morris Gordon they should straighten it out, because he give me his word and took back his word and Mr. Gordon said it is not enough, five or six cents is not enough, that is all he said and I went away and I must

pay more. Then I pay five cents and six cents and six again above the market. I had been paying two cents above the market before that time when I bought anywhere I liked. In September, 1928, I paid three cents. I don't know defendant Arthur Herbert, known as Tootsie Herbert, or Sam Lipkin.

Cross-examination.

By Mr. Sager:

The Witness: I had been in the poultry business seven or eight years. I was in business with Harnett & Company eight weeks from about the end of February, 1928 to May, when I went back to the same store. When I had my store before I had the same business. When I came in as a partner of Harnett they took off the shochtim. I don't know what we paid him. Only one shochet was there.

There was no strike on at the time of the picketing. All of this occurred when I was in partnership.

My store was located in Brooklyn and I continued that business when I was in partnership with Harnett at the same time. For my retail business during the time I was connected with Harnett & Company I came once to Rubin and he refused to give it to me. When I came to Rubin for [fol. 326] chickens my chickens were burnt. I bought from Rubin chickens until I became partners with Harnett.

These men that were picketing my store in Brooklyn told the women who wanted to come to buy chickens in my store not to buy any because these chickens are from scabs. To prevent picketing of this store, I went to Judge Goldstein, my lawyer, to get out an injunction. I made out the papers or application for injunction in the Supreme Court in Brooklyn.

By Mr. Kaufman:

The Witness: When I went back to my own retail store I bought chickens from Rubin and paid four cents above the quotations in the Washington Market. The chickens that I bought from Rubin were already slaughtered chickens. The four cents difference was the cost to Rubin of handling slaughtering and delivering those chickens and a profit to him for the handling of those chickens. If butchers go to

the Washington Market they have to deliver it themselves. When I bought from Rubin he delivered the poultry to my store.

After I left Harnett & Son I bought chickens from no one else except Harry Rubin. After May, 1928, I did not buy chickens from Morris Grodon or David Hirshon. After the Jewish New Year, I bought chickens from Taits a few times, two days before New Years in September, 1928. I bought from Morris Hallman after May 1928, at the same time that I bought from Taits. I did not try to buy chickens from any one else except Rubin, after May, 1928. I tried [fol. 327] only to buy at Hirshon before I became a partner with Harnett. I tried to buy from Morris Gordon, May 10th or May 15th. After I left Harnett, he told me "Why don't you take from Rubin?" I told him that Rubin changed his mind. I spoke to him about four, and now he wanted six. Then Morris Gordon told me, "Come with Rubin Sunday morning to my place and I will talk it over with Rubin." That is the only effort he ever made.

By Mr. Shalleck:

The Witness: When I saw shochets with beards in front of my store picketing there were two of them changing it every two hours. I saw Kalman Shapiro standing across the way. I came over to him and asked him what will be the end of it all. He says "We will see how we can straighten this matter out." That is all. I heard in the city from shochtim who said that Shapiro is the president.

Redirect examination.

By Mr. Oseas:

The Witness: I came to Gordon and told Gordon he should try to straighten the matter out. At first we spoke of four cents and then they spoke of six cents. He answered me it was not enough for him to take six, he ought to get more. Then I went away; I saw I cannot help myself and I paid six. Before the picketing started I had been employing a union shochet, I forget the name.

By Mr. Shalleck:

The Witness: Shapiro told me that if I take in two shochtim they will stop picketing. "I can only give you

shochtim and that will stop the picketing, but I do not know anything about the merchandise, I cannot help that." That [fol. 328] is what Shapiro said. I never had two shochets before, only one. I do not know whether the union rules provided for two shochets at that time. Prior to that time I never had a shochet in my own retail store. And the only time when I did have a shochet was the time I was *was* with Harnett. When Shapiro asked me to have two shochets, he meant at Harnett's place.

The following testimony was given by the same witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am still in the chicken business. From October or November, 1928, up to the present time, I have not had any trouble getting poultry.

Mr. Kaufman: I move to strike out all the testimony of the witness on the ground it is all immaterial to the conspiracy alleged in the amended petition; and on the further ground that all of the acts as to which the witness testified relate to acts in intrastate commerce, having nothing to do with interstate commerce.

The Court: Denied.

Mr. Kroppy: I join in the objection, and also object on the ground it has no tendency to prove that any of the acts were committed in pursuance of the conspiracy alleged in the amended petition.

The Court: Denied.

Mr. Kaufman: Exception.

Mr. Kroppy: Exception.

Cross-examination.

By Mr. Kroppy:

The Witness: I don't know of any market men at all who refused to sell any retailers live poultry since October or November, 1928. They gave to everybody after that time. I paid three cents before 1926 and I pay now three [fol. 329] cents. It was only the two years from 1926 to 1928 that they charged more than three cents.

[fol. 330] HARRY STAUBER

(The following testimony of the Government's witness, Harry Stauber, given at a former trial in October, 1929, was read in evidence by stipulation, subject to objection and exception as to its competency and materiality):

Direct examination.

By Mr. Rice:

The Witness: I am in the retail poultry business in Brooklyn, five years. I buy the poultry already slaughtered, sell it as fresh killed poultry. I bought my poultry in Jun-, 1927, from Dworkin & Blumenfeld. I tried to buy poultry some place else during that summer of 1927. I tried with the Prospect Poultry Company, where I spoke to Charles Bistretsky (identifying him). I spoke only to him. I told him I want to buy some poultry for cash. He said "I wouldn't sell you any poultry. You better go back to where you belong." I said "What do you mean, I shall go back to where I belong? I am going to buy poultry for cash, American money." He said, "I am sorry, you will have to go back to Dworkin & Blumenfeld." When I first started to buy I used to pay Dworkin & Blumenfeld two cents above the market. A few weeks later he raised me to four cents. I asked why the raise was. He said "There is an association; we cannot afford to sell at two cents, we must have four cents, and if you don't buy here you cannot get poultry anywhere." The man I talked to is Harry Dworkin. A couple of weeks later he raise me to five cents. It was in the early months of 1928. I said "You just raised me, why should I pay more"? He said "That penny doesn't come to me, anyway, we got to give that penny to gangsters, you shouldn't kill anywhere else." In 1928, I went in to Jack Mintz, and I wanted to buy some poultry there. He sold me some poultry and he [fol. 331] asked me "Where have you been buying your poultry?" I said, I buy my poultry all over. He sold me some poultry at a certain price. Before the stuff was charged to me he said "What number is your store?" I told him 1750 Prospect Place. So he went in the office and he said to the partner, "I better call up and find out where he kills his stuff," so a couple of minutes later he said to

me, "I am sorry, I cannot give you your poultry, you better go back to Dworkin because you buy your poultry from Dworkin." In my presence, he called over J. Hassenfranz—he said, "I will sell you that poultry that Harry calls for. I will sell it to you, but I won't sell it to him." He said, "Go back to Dworkin."

I also went down to Harnett & Son. I bought there some poultry. He said "I will sell you some poultry, but I will not deliver it to you, you will have to take a taxi." I did buy the poultry and took a taxi. As soon as I arrived at my store there was a man—I couldn't call his name—I could recognize him. This is the man (indicating). As I brought in the stuff for the taxi, he said, "Where do you kill your stuff?" I told him by Dworkin. He said, "No, you are lying, you don't kill by Dworkin." That day I did kill by Dworkin, but for the second time I bought from Harnett. It was about eleven o'clock, so I took out a charge ticket and showed him I did kill by Dworkin. Dworkin told him he did kill in the morning, but for the second killing I did not come down to him. He warned me, he said "If you are not going to buy the stuff where you always buy you are going to get a beating." There was with him on that occasion Kowlow. Then that day he told me he heard I am selling some poultry to butchers. [fol. 332] "Yes," I told him, "I didn't know if it is a butcher, I sell to anybody that comes in my store. I don't ask him whether he is a butcher or a customer. Anybody that comes into my store I sell him." He said, "You better keep away and not sell wholesale to butchers, because I am going to give you a good beating." This man over there (indicating defendant Kowlow); that man was there in the machine. Whether there were any other places where I tried to buy poultry at that time I cannot recall.

No one else told me I had to buy poultry from Dworkin and Blumenfeld besides the people I have mentioned. I had a conversation with Charles Herbert in Dworkin's place in the early months of 1928. He also heard that I am selling wholesale stuff to butchers. I denied that to him. I said I don't sell. He said "Well, I heard that you do sell to butchers stuff." I told him, I don't know, a man comes in to me in the store, buys poultry and pays cash, why shouldn't I sell him. Mr. Koslow was also there in a

machine. He wanted to give me a beating. He said "You better keep your mouth shut. If not, I am going to beat you up." Charles Herbert said that and I promised him that I wouldn't sell any. At this time that I talked to Carl Firestone about buying from Dworkin he also told me I shouldn't sell to butchers; if I am going to sell to butchers, I wouldn't get stuff. If they find out I get stuff he is going to beat me up.

Cross-examination.

By Mr. Sager:

The witness: I did business in Brooklyn in what is known as the Brownsville district. I was strictly a retailer. The [fol. 333] business was conducted under my own name alone. I had no license to slaughter poultry. I handled what is known as dead poultry. There was some complaint from some of these parties about my selling to butchers. I did sell to a couple of butchers, 25 or 30 pounds to each one. I do not know the names of them. I had some dispute with Firestone, Mr. Herbert and Mr. Koslow. I think Koslow and Herbert were together. Koslow was sitting in the machine outside. I and Herbert were outside also, in front of Dworkin & Blumenfeld's market. I did not have any conversation or altercation with Mr. Herbert or Mr. Koslow, other than on that occasion. I had some altercation with Mr. Firestone. He was not present at the time we have just discussed. Firestone was in my business place about April, 1928. With him was Sam Lax and Mr. Koslow. They were outside the place; I didn't let them in. As soon as I came in they said, at the entrance to the store, they stopped me off and they asked me where I killed the stuff. They drove up in a machine. They all got out of the car. I had my talk with Firestone. The others were simply present. I had two altercations, one with Herbert and with Koslow, in the early months of 1928, January or February, and the second altercation was with Firestone where these two other men were present in April, 1928.

I say the price of chickens was raised from two to four cents along about October or November about two years ago, 1927, by Dworkin & Blumenfeld. When I say they raised the price they had been charging me at that time two

cents above the market price that the marketmen have to pay the commission men. It is the published market price [fol. 334] that obtains from day to day in the Washington Market. The marketmen were getting two cents a pound for handling the chickens, for their overhead and their slaughtering, and up to October, 1927, they were only charging me two cents profit. In one of these altercations, I think it was with Mr. Firestone, he told me he would beat me up if I didn't quit talking. I couldn't blame him for that, he is stronger than I.

Cross-examination.

By Mr. Kaufman:

The Witness: At the time that I saw Charles Herbert, he didn't tell me his name. Before that I saw him too, but I didn't know his name. I remembered him because he had a cut on his face. I asked somebody else in Dworkin's market what his name was and he told me. I remembered him from the time I saw him, in the latter part of 1927.

I had one altercation with Firestone at Dworkin's place of business. I think I had another one with him. He also told me I should be a good boy and kill the poultry there in his place because otherwise I wouldn't get any stuff at all.

By. Mr. Shalleck:

The Witness: I was not beaten up by Firestone or Herbert. After I got that warning I did retail business and did not sell to butchers. I did not see them again after that.

(End of testimony given at previous trial, read into the record.)

The following testimony was given by the witness Stauber at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I have been in the butcher business since the [fol. 335] Jewish holidays in October, 1927. That is the time that I had the trouble that I testified to. Since that time in 1927 I have had no trouble at all. I have been getting poultry all over, wherever I go. I have always bought poultry

from marketmen and not from the receivers in West Washington Market.

Mr. Kaufman: I move to strike out this witness' testimony on the ground that it is immaterial, and on the further ground that it discloses beyond any question that all of the transactions that this witness had, dealt with intrastate commerce. It dealt with transactions between himself and market men and according to the decision of the Circuit Court of Appeals, that was clearly intrastate.

The Court: Denied.

Mr. Kaufman: Exception.

Cross-examination.

By Mr. Kroppy:

The Witness: I don't know of any other retailers or any other dealers in live poultry who have been unable to obtain poultry from either the market men in New York City or anywhere since the fall of 1928. Even those who refused me at that time—I am buying the poultry now there, all over. I don't know of any case where any of these marketmen have refused to sell anybody else any poultry since the fall of 1927.

Re-cross examination.

By Mr. Kaufman:

My trouble lasted during October, November and December of 1927 and possibly a month or two in 1928. At the Easter holidays in 1928, I had no more trouble. I haven't had any trouble since, and I never heard of any other having any trouble since.

Redirect examination.

By Mr. Rice:

The Witness: I don't remember exactly which months, but I am sure in the late months of 1928 I was getting poul-
[fol. 336] try all over. It is possible I may have been having trouble in May, 1928, and my trouble with Carl Firestone may have been in May, 1928.

(The following testimony given by MAX GORDON, a witness for the Government, at the former trial in October, 1929, was read in evidence by stipulation subject to objection and exception as to its competency and materiality):

Direct examination:

The Witness: I am in the retail poultry business and sell slaughtered poultry. I have been in that business twenty-five years. During the summer of 1927 I used to buy all over. Since the existence of the Chamber of Commerce we have to buy one place, Bernstein & Sorkin; that was about the fall of 1927.

I stayed with Bernstein & Sorkin a couple of months. I tried to go all over and I couldn't get it. I called up Louis Maritzky. He said "I cannot sell you no poultry, because I will be in Dutch." Jake Koslow, I used to deal with him. Hirshon, Morris Gordon, Louis Maritsky, Dave Hasenfratz—I know every one here, and what's the use. Nobody wants to sell me poultry. I went downtown. Nobody would sell me. I used to deal with Abie Wolff, too, and Dave Gordon.

I remember one day I went to Frank Siegel in Ozone Park to get some ducks. I got them. It was this time of the year two years ago. Bernstein & Sorkin buy ducks from West Washington Market. They asked me five, six cents a pound more. I said I cannot afford to pay five, six cents a pound more. I went to Ozone Park and bought at less and I got the ducks in the house and after a fellow came down from Bernstein & Sorkin and said "I know where you got the ducks." I said to him "What's the matter, can't I buy where I please?" He said, "No, sir, you got to buy one place."

On the second day we used to mark the stuff, we used to kill poultry, five or six coops, and I came to the place and [fol. 338] marked my coops, the number, to show they belonged to me. I came to the place and I find my poultry gone. I say, "Dave and Mr. Sorkin, what do you call this?" He said "We are going to fix you for this." I came down to the market today and I couldn't find my poultry. I took my machine and went away to Ozone Park and

just when in his place I went in behind the coops and all of a sudden appears three people on top of me—Jake Koslow, Carl Firestone and Sam Lipkin. Sam Lipkin said, "This is the guy we are looking for." He started to argue with the marketman what kind of business have you to sell him poultry. He said "I didn't sell him poultry. The trade is open. Everybody welcome. Let him come in." And I had a little argument, had a fight. I said "I see I am in Dutch," and I took my machine and went away. I did not get any poultry from him. It was about eight o'clock on a holiday. When I have to get by five o'clock my poultry in the store. I couldn't get no poultry. I went to East New York again, to Belmont Avenue, by a retail man. He sold killed poultry; Morris Levitz. All of a sudden he backs a big truck. We kill poultry. I said "Morris, do me a favor, I am in Dutch, I couldn't get a pound of poultry." He said "What do you want?" I said, "I don't care; give me something. There is a crowd in front of my store, women, and I couldn't get a pound of poultry. It is nine o'clock already." So I don't know what he got in the bag. I say, "Put it in my machine, I am glad I got the poultry for the store." I don't care what kind of poultry as long as I got anything to sell. The same time I call up a marketman by the name of Dave Hasenfratz. I say, "Do me a favor. I used to work with you together. Send me something." [fol. 339] He said "I couldn't help you, the crowd is lying on top of me not to sell poultry. Well, I will try to change. In case they go away, I will send you a coop of poultry." About eleven o'clock he sent me a coop of poultry. He sent me lights. I need heavy. I went back and said "Send me any place in your name half a coop of anything." I went to a woman. She called up Louis Maritsky, and said "Send me"—not on my name but her name. He sent me half a coop and I must carry it on my shoulder to my store, about five blocks. They were watching the machine. We passed the holidays. After the holidays we have to get a place to buy poultry. As long as Dave Hasenfratz helped me out, I want to go to Dave Hasenfratz to buy poultry. I went to Attorney General Ottinger and after I went to see him, I went to Benjamin Simon the same day. I said "Mr. Simon, I see you the first time. I am an old timer in West Washington Market. I used to

work for fifteen years carrying coops and everybody knows me. It is hard work. Give me a chance to live. I am paying my bills. I don't owe anybody any money." He said, "I will fix it up. Where do you want to go?" "I want to go all over." He said, "Nothing doing; you go in one place," Benjamin Simon told me. He said "You can't go all over." I said, "I will go to Dave Hasenfratz, it is near to my place. All right. I done him a favor, I got to do him a favor, he won't lose anything, I will stay by him." I went to him. As soon as I make a killing Monday I come down, and the second killing, he said "I am sorry, Max, you are an old timer, I can't sell you poultry." At the same time I find Jake Koslow was over there. What he [fol. 340] speak to him, he don't tell me. I said "Dave, how is that, Benjamin Simon told me——"

Mr. Halheimer: I object to that conversation had with a man by the name of Hasenfratz. He is not a defendant in this case.

Mr. Oseas: Of course not, but Benjamin Simon sent him over.

Mr. Halheimer: I object to any conversation had with Mr. Hasenfratz.

The Court: Overruled.

Mr. Halheimer: I didn't object up to this point, but it was incompetent before when he testified to it, and I move now to strike it out.

The Court: Denied.

Mr. Halheimer: Exception.

The Witness: Dave Hasenfratz said "I cannot sell you poultry because you got to go back to Bernstein & Sorkin." I said, "No, I will close the store, I will go out from the business. I wouldn't go." I say "I will go up to Benjamin Simon again." I called up Benjamin Simon. Benjamin Simon said "You stay where you are." I told Benjamin Simon over the phone that I could not buy from Hasenfratz. I called him up over the phone. I say he won't give me the poultry. He call up Dave. He speaks to Dave, right away, at the same time. He said "Give him the poultry." He started to hand me poultry. All of a sudden the shochet would not kill for me. I went again to the District Attorney Ottinger.

After I had my talk with the Attorney General, I went back to Hesenfratz alone, and the shochet killed for me.

After this, he gave me such a breakfast, I couldn't eat no dinner, I couldn't eat no supper, he gave me such stuff. I threw it out. I said "I cannot deal with you. I am done [fol. 341] with you." He said "You are again in trouble." He said "I don't keep you, you go where you please."

One day I went to Morris Gordon. First I went to Dave Hirshon. Hirshon told me "What's the matter; again in trouble?" I said "I don't want to stay by Dave Hasenfratz. He don't want to recognize me. He don't want to talk to me." I said "You drop it with Dave Hasenfratz altogether." He said, "You got money; I sell you poultry." I said "What's the matter, two years ago you don't ask me for money? How much my bill amount to? When I sell a hundred pounds of poultry, $35." He never ask me for money one year ago when I went to buy poultry.

The same day at nine o'clock, I couldn't get no poultry. It was a week day. I went to Morris Gordon. He said, wait, he is busy, he got to send out the merchandise. "What do you want again?" All of a sudden Carl Firestone came down with a machine. He went in the office and started to talk with him. He said "Where are you going?" I said to Louis Maritsky. I went to Louis Maritsky. Firestone took me with his machine, and he started to bring me over, and I started to deal with Louis Maritsky and after I deal about three or four weeks, I see every marketman said, "You want to buy of me poultry, I can sell you what you want." Another marketman, another marketman; they all started to come in the summer, I guess last year. The last summer was the first time any marketmen came around and asked me for business.

I bought poultry for Joe Hasenfratz. I had a conversation with Louis Maritsky, a marketman, about buying poultry for Joe Hasenfratz. He said "I will get in trouble, don't put me in trouble." After October, 1927, I paid [fol. 342] Bernstein & Sorkin about ten cents above the market. Just before that, when I bought all over, I paid three, four and five cents on springs. At the time these three people followed me into the market in Ozone Park, they talked to the marketman. There was no disturbance of any kind.

Cross-examination.

By Mr. Jacobson:

The Witness: Samuel Lipkin was one of the men who came into the Ozone Park place. He was a bookkeeper then for Charlie Werner, one of the jobbers or receivers in West Washington Market. I used to work with him. I was downstairs lifting coops. After I quit West Washington Market, I went in the slaughterhouse business. During those two months I used to go to West Washington Market to buy goods, to Charles Werner's place, ten or twelve years ago. Sam Lipkin did not refuse to give me goods. I will show you the bills. I went to buy goods for Joe Hasenfratz in my name, because nobody wanted to sell him poultry, he is in Dutch. He said that to me before. My credit was good. I told every marketman you better take cash. They said we don't want cash.

It was Dave Hirshon who said "You got money, I will sell you." Morris Gordon didn't ask me for money. He said "I can't sell you poultry." Then I went to Louis Maritsky; he sold me poultry on credit. I always bought on credit; I am paying a thousand dollar bill now on credit. I said to the marketman "Go ahead, I will pay cash." They don't want money from me. They trust me all over.

I was paying nine and ten cents above the market, to [fol. 343] Bernstein & Sorkin. I will bring you the bills for the year 1927 and for the early part of 1928, before it became B. Taits. I bought from the same place when it became B. Taits one week. After Bernstein & Sorkin left it, and B. Taits went in, I wouldn't buy from him, because I heard they done a dirty trick to the rest of the dealers. I had trouble with Bernstein & Sorkin because he charge me five or six cents a pound more. Bernstein & Sorkin told me I could not buy any place else. Dave Danziger and Louis Sorkin told me that. The Chamber of Commerce was not selling me in 1927. Before that I had not dealt with Bernstein & Sorkin. One week I started to deal with him and after he went up and up and up, I didn't care about prices, but when he got to 39 cents, I said I cannot pay, I got to pluck it, and the blood goes out, and I will have to charge 50 cents a pound for poultry. I didn't tell them I wanted to buy all over. "You can go," he said, "I don't

keep you here." I didn't say he said he was going to do something. He told me to go ahead, do what you please.

Carl Firestone and Lipkin and Koslow came up to Ozone Park. They did not mention Bernstein & Sorkin's name. They didn't say they were sent there by Bernstein & Sorkin. They just came there to see what I was doing. When I came back to New York it was Carl Firestone who took me over to Louis Maritsky's place with Morris Gordon's permission. I wanted to change my dealer from Bernstein & Sorkin to Louis Maritsky. I paid Bernstein & Sorkin. I was sitting in a restaurant, and he said "Give me a hundred dollars." I said "Here is the hundred dollars, what is the money for? You never asked me for money before." [fol. 344] I came back to the market and found my goods sold. I said "Is that the trick you play on me, you take in advance for the money and sell my goods?" Then I went to Dave Hasenfratz. After that I went to Louis Maritsky. After this money, I deal with Dave Hasenfratz. He sold me poultry on the credit of a week. I bought from Dworkin & Blumenfeld. They sued me for not paying the bill. They did not get a judgment against me, because I didn't owe them any money.

By Mr. Halheimer:

The Witness: I remember the day I went over to the Attorney General, this time of the year 1927. I saw a man there by the name of Mr. Groat, who sent me to see Mr. Simon. I spent about an hour with Mr. Simon. He asked me whether I owed any poultry dealers any money. I told him that I owed some poultry dealers money. I paid it.

By Mr. Oseas:

I told Mr. Simon I paid my bills. I got poultry after that from Dave Hasenfratz.

The following testimony was given by the said witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I still have a chicken store. In 1928 I was able to get my poultry everywhere. Since that trouble that

I testified about in the criminal case, I have been getting my poultry without any trouble of any kind. I have not heard of anybody who has been having trouble during the [fol. 345] last three years.

Cross-examination.

By Mr. Kroppy:

The Witness: Since 1928, I have not heard of any of the marketmen in New York City refusing to sell any poultry to retailers in New York, except they don't pay their bill.

Mr. Kroppy: I move to strike out all of the testimony given on direct examination on the grounds previously stated, in reference to the testimony of the other witnesses, and I urge my motion on the ground, further, that none of this testimony tends to show that any of the acts or transactions or declarations made during the period testified to tended to show that there was any intention on the part of the market men or any of the defendants to restrain interstate commerce, and that the acts and the declarations were limited to carrying out of the conspiracy in restraint of intrastate commerce alone.

The Court: Denied.

Mr. Kroppy: Exception.

Redirect examination.

By Mr. Rice:

The Witness: My trouble started in the latter part of 1927 and it lasted up until the middle of 1928 or so.

[fols. 346 & 347] DAVID HASENFRATZ

The following testimony given by DAVID HASENFRATZ in behalf of the plaintiff in a previous trial in October, 1929, was read in evidence pursuant to stipulation, subject to objection and exception as to its competency and materiality:

Direct examination.

By Mr. Oseas:

I sell slaughtered poultry. I buy my poultry alive, at West Washington Market and sometimes at the Central, Delaware and Erie and Penn. terminals. I have been in the poultry business thirty-two years, eighteen years at 718 New Lots Avenue, Brooklyn. I am a member of the Greater New York Live Poultry Chamber of Commerce. I joined about three or four years ago, since there was a Chamber of Commerce. I know defendants Hirshon, Koslow and Morris Gordon.

I had a conversation with Hirshon about April, 1928, in his market. I didn't say nothing to him. He told me he wants $125 for the two weeks, during the Passover holiday. I had had no prior conversation with him. He told me, "We have got to pay something to the association." That is what I got to pay, is $125 a week for the two weeks; that is Passover. I paid that, but after that I did not pay him any more. I paid the money to Sam Lipkin in my office. (A person stands.) That is the man. I do not know the times I paid him. I made other payments outside of that $250; maybe a week or two later I gave him fifty at a time. No more than -125 and -50. I agreed to pay $50 with the same Sam Lipkin—either Hirshon or Sam Lipkin, there was the two; I cannot tell you exactly; sometimes Lipkin and sometimes Hirshon. I paid maybe four, five or six or seven weeks; maybe more. Sam Lipkin and Michael Lax collected the money. (Lax stands up.) That is the man. Carl Firestone was around once or twice but I did not pay him the money.

I did not have any conversation with any of the defendants with regard to the people to whom I was to sell poultry. I was doing a wholesale business at that time, [fol. 348] selling 10,000 pounds, 8,000 pounds per week. Lipkin and Hirshon told me not to sell to strange butchers; it was at or about the time I was making these payments Sometimes I sold to strange butchers. The shochet did not want to kill it. I got my poultry in West Washington Market. I got stopped once or twice by the Western Commission Company; they would not give me stuff. I spoke to Irving Sokoloff. He said I can't get any poultry but did not want to say why.

I also tried Manhattan. I don't remember to whom I spoke that time, but they didn't want to load me; the workmen would not put it on the truck. I straigthened it out afterwards. I spoke to Charley Herbert. He wanted I shall get in two union shochtim, so I got two shochtim in and he started in to load. At that time I had shochtim, but not union shochtim. I paid a short time and stopped. Nothing happened when I stopped the payments. When I stopped paying, I got poultry all the time. This money was paid to the Chamber of Commerce. These $50 and $75 payments were before I paid $125 for two weeks. Then I paid $125 and then it went down again to $50. I remember having been stopped for a couple of hours in West Washington Market. Hirshon asked me for $125, instead of $50. I didn't pay him right away, but a week later. After the conversation with Hirshon I got my poultry.

Cross-examination.

By Mr. Kaufman:

I was in business, in Brooklyn. I had two workmen, two rabbis, that is four. The workmen were members of the union, but the rabbis were not members of the union at that time yet. They were working for me and I got stopped in the morning on account of the shochtim. It was not union help. Then they became members of the union, and I was stopped until these men became members of the union. The stopping consisted of the fact that union men in the market refused to load my product. After those shochtim [fol. 349] joined the union, I refused to pay them the increased wage, and there was a dispute between me and some officials of the union. I adjusted the wages with the men. The only two times I had any difficulty with the union was first when the shochtim were not members of the union and second when I had a dispute about paying them the union scale of wage.

Cross-examination.

By Mr. Jacobson:

I was told not to sell to stranger butchers. There has been lots of trouble with butchers, pretty bad in paying bills. I discussed with the marketmen the subject of sell-

ing to strange butchers. They told me we should not sell to the butchers that owed bills in the market. I spoke to Hirshon, Shapiro and Sam Lipkin. In my market they were talking to me. When we talked about it, we were also talking about how the butchers ran around to all other marketmen and run up bills all over. We talked about how we didn't even know the names of the butchers. I didn't know their names, I knew the numbers. We talked about how the butchers would open a place and run up bills and then close it, and then go to another district and run up other bills; also how the butchers only had a block and a hook and scales for the whole trade. The talk when I was told not to sell strange butchers occurred just before I paid the $125 per week. I was told in connection with that, that it was necessary, in order to keep track of a butcher's credit, that he deal at one certain place. I was told that I should not sell a strange butcher until he had paid his bills to the dealer he was dealing with.

One of the places I went to buy poultry was the Western Commission Company in West Washington Market and I talked to Irving Sokoloff. He sold me all the goods I wanted, but the men refused to load. Before I paid the $125 a week, I cannot tell you how long I had paid that $50 a week.

[fols. 350 & 351] Redirect examination.

By Mr. Oseas:

When I talked about the strange butcher situation and mentioned Shapiro, I meant Shapiro the shochet. (A person stood up in the courtroom.) That is the man. He said I should not sell to butchers that owe money. At the time that I agreed with Hirshon or at the time that I made the payments, nothing was said about what the money was paid for. I asked once Sam Lipkin and he said it is for the association; that is all he told me. I do not know what the association did with that money.

[fol. 352] The following testimony was given by the said witness at this trial:

Cross-examination.

By Mr. Kaufman:

The witness: I had trouble with the union twice, once when my chauffeurs were not members of the union, and

a second time when I did not pay the union chauffeurs the union scale of wages. That is the only trouble I ever had. The first one lasted about a week. The second time it lasted eight weeks. In October I had some difficulty because I didn't have union chauffeurs. That trouble lasted a week, and during that week I went to West Washington Market and the commission men sold me poultry but the union men would not load my trucks. After that one week, I got poultry, all the poultry I wanted, and there was no difficulty of any kind. Then later on, I had trouble but it wasn't the point of the union. I have nothing to do with the union, the point was the money and when I gave the money they loaded the stuff. That was in 1927, and that trouble lasted about a week. Since that time I have not had any other difficulty. No one asked me for any collections or to make any payments of money since that time. Since this one week's trouble I had in 1927, I have been able to purchase my poultry wherever I wanted to and never had any trouble of any kind.

Cross-examination.

By Mr. Kroppy:

The Witness: I don't know of any other marketmen that have had any trouble in buying poultry in 1927, or of any trouble since then that retailers have had in buying poultry from marketmen, and as far as I know, the marketmen and [fol. 353] all the other men who were defendants in the criminal case which was tried in 1929, have not caused anybody any trouble in the buying or selling of poultry in New York City.

Mr. Kroppy: I make a motion at this time to strike out his testimony on all the grounds previously made, as to the testimony of all the other witnesses.

The Court: Denied.

Mr. Kroppy: Exception.

Redirect examination.

By Mr. Rice:

The Witness: I had trouble for about a week in October, 1927. After that I had eight weeks' strike again, around 1928 or the early part of 1929, it was around there. In the

latter part of 1928 and the first part of 1929, if I had the men I would be able to load, but I didn't take the union men. My boy, he went down to West Washington market. The men at the receivers' stalls, wouldn't load let him load the stuff. I tried all over. They wouldn't load it. He tried once and he did not go any more. I made a statement in the office of the United States Attorney, in the summer of 1928. And at that time I learned that the United States was investigating. Immediately after that time I was able to get poultry. Before that time I had trouble. Then the union men would not load me in West Washington market, but it wasn't the union men interested in this here. Because I did not pay Dave Hirshon at that time, is why I couldn't get the stuff. He was a market man in Brownsville. He did not make collections. Sam Lipkin and Carl Firestone made the collections from me. I paid it a couple of times and then I refused. When I refused to pay, I couldn't get the stuff.

[fol. 354] I had some difficulty in May, 1931. I had two shochets, so I laid off one shochet, and one man he did not want to kill for butchers. I couldn't sell to butchers any more. Nobody told me not to sell to butchers, but the shochets wouldn't kill for any butcher or poultry dealers, only for women who came and bought the poultry for meals. I had to stop doing wholesale business at that time entirely. Prior to May, 1931, I had been selling wholesale, and sold to every one that come in the place. The shochet said he wouldn't kill for the butcher. Only for the women. That is all. At that time I was getting poultry in West Washington Market. I was getting it all over.

This year there was no trouble at all in buying poultry. The shochet did not kill stuff, that it all. About three months that way he did not kill stuff for butchers. The Rabbi would not kill in the place for the people, but West Washington Market sold me anything I wanted. In May, 1931, the shochet did not want to say who told him not to kill for butchers and retail dealers. He says "I don't want to kill," that is all. He said some one from his office gave him orders not to kill and he did not kill. He did not say it was Joe Rosenman, and he did not say it was Kalman Shapiro.

Cross-examination.

By Mr. Perlman

The Witness: Up to May, 1931, I conducted what is called a union market. I agreed to the scale of wages and the conditions of employment that the Shochtim Union had arranged with all the marketmen, and I knew the rules. There are wholesale markets and retail markets. The wholesale market sells to the butcher and the retailer, and the retail [fol. 355] market sells only to the consumer. The scale of wages for the shochet in the wholesale market was $65 a week and in the retail market $45 a week. The shochet who gets $45 a week under the union rules and the agreement made with the market men, kills only when the sale is made to the housewife, and under the rules of the union, the $45 a week shochet does not kill chickens sold to butchers. When the market man wants to sell to butchers he must have a shochet who gets $65 a week. That was so in May, 1931. The wage that I paid my shochet in 1931, was $45 a week. I had notified the union that I was going to conduct only a retail market, and that meant that I would not sell to the butcher. The union sent me a shochet at $45 a week who was supposed to kill only when I sold to the householder.

When I had this trouble in 1931, I had this retail market shochet in my place and butchers came in to buy, and wanted this shochet to kill for them. This shochet said he was only there to kill chickens sold to the householder, and then he refused to kill the chickens that were being sold in my market to the butchers. That was in accordance with the rules and agreement that were made by me with the union. That was the whole trouble. If I had had a shochet at $65 a week, I could do a wholesale business and sell to the butchers.

By Mr. Rice:

Prior to May, 1931, I was doing a wholesale business, and it was only because the shochet told me that he wouldn't kill for butchers and retail dealers that I stopped doing a wholesale business, but I had a $45 a week shochet.

My market was in the area covered by the Brownsville group of market men. In 1927 and 1928, I was told to em-

[fol. 356] ploy two shochtim and two men by the union. I did employ two shochtim and two men all the time. During the year 1928, I did not let some of my men or shochtim go. I kept two men and two shochets all through 1928, and 1929. I do not know that in 1927 and 1928, when market men stopped making payments to the Brownsville Association they were required to take four men and two shochtim of the two unions; they never tried it on me.

Cross-examination.

By Mr. Perlman:

The Witness: In May, 1931, when I decided to conduct only a retail market, up to that time, I had two shochtim. Then I told the union I would run a retail market with only one shochet, and the union then let me discharge one of the shochtim, and the other one was to get only $45 a week. The union agreed to that. They didn't insist on my having two shochtim, only one shochet. I remember the two men that I had before, each worked a week at a time at $45 a week. The union sent in the two men, but each one worked a week, so that each one got about $22.50 a week, as they worked two weeks every month, at $45 a week.

[fol. 357] David Hirshon, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a wholesale poultry market man in Brownsville. I was a director of the Chamber of Commerce in 1928 or 1927. It might have been 1927, 1928 and part of 1929. I don't remember. Another director of the Chamber of Commerce representing Brownsville, I think, was Morris Gordon in the fall of 1929. I was a defendant in the criminal prosecution. I was convicted and sentenced to four months and $2500 fine. I didn't plead guilty. I was tried and convicted, and I never made a statement to the Government prior to the criminal case.

I attended the meetings of the Board of Directors of the Chamber of Commerce, maybe once every week or maybe once every two weeks.

I don't know whether Louis Weidberg was present at the meetings, maybe yes and maybe no. Who can remember three or four years ago; I can't remember all that. I did not see him make collections on the East Side. I think he paid some money to Ben Simon, because he used to tell me. I don't know how much, maybe three or four or two-fifty, something like that, but not any seven or eight hundred dollars. Just after Simon was made supervisor and attended the board meetings—I don't think I was on the board at that time. I was made a member of the board maybe eight or nine months later. At one time I was president of the Chamber of Commerce. My duties as president were sometimes to call a meeting, or if they had any argument with the union labor to straighten out, if I could do something for them, I done it.

[fol. 358] At one time, an arrangement was made in the board of directors' meeting of the Chamber of Commerce, whereby collections should be made from each one of the various districts of New York City, but not of one cent a pound. We didn't need any cent a pound. I don't remember the amount that was to be collected. The Bronx, Harlem, East Side, Brooklyn, Brownsville, and Borough Park were six districts into which the Chamber of Commerce was divided. I don't know what they did in the Bronx, or in Harlem. I know what they did in Brownsville, my own district. At those meetings of the board of directors, it was not stated by the various market — present that the Bronx was supposed to pay 22½ per cent; Harlem was supposed to pay ten per cent; East Side 16½ per cent; Brooklyn 16 per cent; Brownsville 17½ per cent; and Borough Park 18½ per cent. That was never brought up by the board of directors meetings.

I never collected any money. Morris Gordon, Jacob Koslow and I think Samuel Lipkin, collected in Brownsville. Jacob Koslow and Morris Gordon were market men, and Samuel Lipkin was a bookkeeper, but I don't know for whom he was working at that time. Carl Firestone did not make any of the collections. They never had anything to do with us. I didn't appoint the collectors for Browns-

ville. I never heard Benjamin Simon appoint them. If he did it, he did it privately.

They made regular collections from the market men in 1927 and 1928 all over Brownsville. Not everybody gave money. The man that could afford to pay paid. Maybe in the entire Borough was collected about $1400 or $1500 a week, sometimes maybe $1600 or $1700 a week.

[fol. 359] Louis Spatz and Sam Goldstein collected from the Bronx. I don't know whether Max Wolas or Jacob Reisner collected in Harlem. Willie Simon and Louis Cohen collected in Harlem. Louis Weidberg and Charlie Merotznik collected from the East Side. Samuel Sahn collected in Williamsburg. In Coney Island it was Sam Gold. That is all I know.

I saw all of these people make payments to the Benjamin Simon in the Chamber of Commerce but not all the time. Sometimes William Simon and Sam Gold and Louis Weidberg gave money to me to give to Benjamin Simon. They didn't say anything except to give that to Benjamin Simon.

Benjamin Simon told me he wanted this money to pay people downtown but what he meant by downtown I don't know. He never mentioned the District Attorney's office, or the State Attorney General. None of the defendants mentioned payments to the State Attorney General's office. I didn't tell people that these payments were being made to buy off the District Attorney's office and the Government. I told them we have got to have so much a week to pay to Ben Simon. I didn't tell these collectors anything. I had no charge of that. They didn't turn over money to me. They used to collect about $1,400 or $1,500 or $1,600 a week, and all I used to get was about $350 out of that money to give to Ben Simon.

I was a member of the Chamber of Commerce at the time that Benjamin Simon became supervisor. At one of the first meetings, he said he wanted $5,000 a week. He didn't tell me for what. He said he had to see people downtown. He didn't outline any proposal or anything. He said that [fol. 360] is what he has got to have. At that time nothing was said about customers.

At a prior meeting, something was said about protecting customers of the market men, each one will have his own customers. That was all that was said. I couldn't remember who said it. I don't believe that even the Chamber

of Commerce had anything to do with that. Each borough had to do with them by itself.

Benjamin Simon said that we market men should go out and divide up the customers in our respective boroughs. He said at the Chamber of Commerce meetings, "You men go out and get together, and each one hold your customer and you can make a dollar". He didn't divide anything, or say to divide up customers. He did not say that to the board of directors. He said, Let us say, to a man like Morris Gordon or maybe to a fellow like me, when we came up there and asked what do you want money for, "Well, if you want to make a dollar, you have got to have some money to pay people downtown. You can all keep your customers and try to raise the price a cent or two, so you will make a living. He didn't say raise the price six or seven cents. All I charged was five cents a pound. How could I raise seven cents?

It was part of the plan that we should pay $5,000 to Benjamin Simon, and if we paid $5,000 to Benjamin Simon, then each one of the boroughs could organize, that is the market men in each one of the boroughs could organize, and divide up customers amongst ourselves, and no market man would be permitted to sell to the customers of another market man. If a person used to come in with cash we would sell him. If he did not come in with cash, you did not sell him. I didn't agree to that. I do it today, too. If [fol. 361] I don't like a person, I don't sell without cash. We didn't agree to anything. That was only said in our own borough, not in the Chamber of Commerce. I don't know what was said in other boroughs.

The first meeting of market men in Brownsville after I had discussed this with Benjamin Simon was at Grabel's Hall, about July, 1927. All market men from Brownsville were there. Maybe a couple of them were missing. I think. I think Jacob Koslow, Morris Gordon and I called the meeting after Benjamin Simon became supervisor. There were present as I recall Morris Gordon, Mack Harnett, Louis Sorkin, Abe Franzel, Philip Garber, Meyer Auster, Morris L. Hellman, Abraham Kleinman, Jacob Koslow, Louis Merotznik, Jacob Mintz, I. Kaplan, Harry Rubin, I. Resnick, Morris Fishman, Barney Aswolinsky, Bennie Danziger, Isidore Blumenfeld, and I. Joseph Rosenman, Secretary of the Shochtim was not there. He was not a market man.

Neither was Joseph Weiner there. He isn't a market man.

Morris Gordon said we should go home and do our best and find out how much poultry Brownsville sells. A week after that, we should go home and each market man should bring back with him a list of his customers and see what we can do. We sold a week's business; Brownsville sells about 450 or 500 thousand pounds of poultry a week. Every market man said let us all bring lists of customers. Some did bring lists of customers, and some do not. Each one was asked if they were satisfied, the way they got the business. Each one remained the way they were, and some of them said they could not make a living with the amount they have got. When they said that, we didn't give them more customers; we gave them money. If two market men [fol. 362] claimed one customer, they straightened it out amongst themselves. If they could not straighten out amongst themselves, they did what they pleased, both sold them. That was done. I had customers that used to buy from me today, and then they bought from somebody else. We did not divide up the customers. If we wouldn't treat them right, then we couldn't keep them, no matter whether they liked it or not. If he could not buy in Brownsville, he went into Brooklyn, and if he could not get in Brooklyn, he went to Borough Park, he was never left without poultry. Anybody was able to get poultry in 1927. I should say they got, because in my place one holiday I sold them poultry for three cents a pound. I tried to get a half of a cent more for the holiday, and I told my customers because I have double expenses for holiday, they left me boycott and left me standing with 135 coops of poultry and they had the poultry; they were not closed, and I was stuck with my poultry.

Benjamin Simon demanded $5,000 a week, and a part of that from Brownsville. That doesn't mean to say a cent a pound. A cent a pound would mean maybe $50,000 a week. The collectors in the various districts were to collect a certain amount of money; as a part of that plan we tried to make customers in Brownsville buy only from one market, if we could do it. I don't know about other districts, I wasn't there, and I am not interested in what they did. All of the market men in Brownsville agreed they would sell only to their customers; we couldn't hold them to that.

Charles Herbert did not get part of that $5,000 per week paid to Benjamin Simon. He never got any of the money. [fol. 363] If there was money to be gotten, Ben Simon would tell me he was giving to Arthur Herbert.

At these first meetings in Brownsville, it was agreed that each market man was to pay so much money to the collectors. Not all the market men should pay, I want you to understand that. Some of the market men were to receive money. The big market man who did the wholesale business was to pay that money, and the small market man was to receive money. When the retailers received money, they should not do wholesale. They agreed they would not sell wholesale, provided they received so much money a week. Some got $125 or $150, some got $200. From the $1,500 or $1,600, they used to pay so much away and the balance went to Ben Simon. About 6 or 7 of the market men received money, and don't forget every week and every month, they used to change around; sometimes the big fellow went down, so small he was getting. The fellow who did a lot of business, he paid out. There were 30 or 35 market men in Brownsville. Some of them didn't give and some didn't take anything; they done what they pleased. Most all of them were either paying or receiving money. Maybe only about ten or twelve were paying.

B. Taits paid money for one week, $50. Then he refused to pay. He sued Benjamin Simon, Arthur Herbert, myself and others. I didn't tell him anything. What the other market men in Brownsville told him, I don't know; I never was in the man's place. I know he had a strike; whether it was around that time, I wouldn't say yes or not. Whether he had a strike of both his shochtim and members of Local 167 makes no difference. If the man goes out, the shochtim is no good, and if the shochtim go out, the men are no good, and you cannot do without either [fol. 364] one. The ones that struck in B. Taits' place of business were members of Local 167, I think. I didn't tell Arthur Herbert and Charles Herbert or Benjamin Simon that B. Taits had stopped paying money. I had nothing to do with that. I didn't tell anybody. Maybe Morris Gordon had something to do with him. I never went into that place. He told me that Taits is not paying. I said, who cares. I don't know whether Morris Gordon told

Charles or Arthur Herbert. Benjamin Simon knew he didn't pay. Somebody must have told him.

A. Weinstein did not pay anything, and did not receive any money. Blumenfeld and Dworkin paid $25 or $35 a week, maybe $50. Abe Franzel of the Howard Live Poultry Co. paid maybe $250 or $300 a week. He was selling maybe 50 or 60 thousand pounds of poultry a week. He was not paying one cent a pound; nobody paid a cent a pound. We didn't need so much money. Garber and Oster paid $100 or $75 a week; maybe $150. Morris Gordon paid $150 or $200 a week, maybe, or more, but less some weeks, maybe $300 sometimes. Abraham Kleinman received $150 a week, I think. He didn't do enough wholesale, therefore he received $150 a week. Jacob Koslow paid maybe $100, or *or* less, I don't know. Louis Merotznik paid $50, if I ain't mistaken, maybe $100. Jacob Mintz paid maybe $200 or $250. I don't know whether he paid $350 a week. He sold 50,000 or 60,000 pounds a week. The total amount sold in Brownsville was about 500,000 pounds [fol. 365] a week. Prospect Live Poultry, Charles Bistretsky's concern paid about $100, maybe more, maybe less. Harry Rubin, I think, paid $50 or better. I am not sure if he paid as much as $100 a week. I don't believe Dave Hasenfratz ever paid. Samuel Kadin paid $50. Frisman and Aswolinsky for a short while paid maybe $75. Sorkin Brothers did not pay. I don't know of any other payments. You have got them all, except with the few retailers.

Most of the retailers received money. Mack Harnett received $200 a week. I don't take his customers; I never speak to the man in my life. I had my own trade. I didn't take any customers and didn't give any. Mack Harnett had a dispute as to whether certain customers belonged to him or someone else, but not in my presence. They did that privately.

I don't remember who was on the committee that decided who should have customers. I think Morris Gordon was on that committee, I am not sure. I was on no committees.

[fol. 366] Direct examination.

By Mr. Rice (continued):

The Witness: I know William Simon, a market man in Harlem. He was one of the members of the board of di-

rectors of the Chamber in the summer of 1927. He asked if I didn't want to belong to the Chamber of Commerce, I told him that I am not doing enough business to belong to anything. He said to me "You will make a living as good as somebody else". I said "Show me how. If you will convince me", I says, "then I will belong to it". I says "With all the poultry I sell I couldn't make a living." He says "Well, don't worry about your place, you will make a living". I says, "All right". He says "I will be getting $500". I want you to understand once for all that one borough had nothing to do with another borough, they couldn't tell me what I could do and what I could not do. He said "Don't worry, you will make a living". I says "How". He says "You will get $500". I wasn't interested how I was going to get it. He did not say the Chamber of Commerce will pay me $500. The Chamber of Commerce had nothing to do with that. He had nothing to do about what we are going to do with our poultry. He says "Why don't you belong to it, it is going to be a payable business". I said "I can't see it, if you will convince me how, then I will belong to it". That is the time he convinced me by saying I will get $500 a week. I am telling you that has nothing to do with our customers, what he did I wasn't interested. All I was interested in was to get the $500 a week. I was not interested if my customers left me and went over to the Harlem district. We couldn't [fol. 367] stop them anyhow, they went anyhow, because the customer wouldn't listen to us. The unions had nothing to do with these customers.

I made the following statement to Mr. Oseas: "William Simon said to me 'why should you be so foolish, I tell you we will make a living'. All of a sudden there became a strike between the union and the marketmen and we did not load any poultry for about four, five, six or seven days." Our contract ran out with the labor union and they submitted a new contract and they want something like a $5 raise and we refused to give it to them and the marketmen went up to the Chamber of Commerce and had a meeting that we should stop loading until the union comes to terms with us, and that was the only reason that we stopped loading. We didn't load any poultry at West Washington Market because we couldn't get any more. Our contract ran out. We couldn't get any under any circumstances.

That was after I joined. That must have been around the first of the year, January or so. I don't remember the year. I am not an educated man that I kept the years in my head. I knew they had a strike. That was before Benjamin Simon came into the business. He wanted $5,000 a week, and said each borough should contribute so much per week. He didn't tell us anything. It wasn't his worry how much we collected, all that worried him was he should get what he wanted. He wanted $5,000 a week and we told him we couldn't give it to him. Later on we agreed that we would give him $2,000. He got $5,000 one week, that was the first week he started. He never told me he got the $5,000. Only I heard from Morris Gordon or somebody he [fol. 368] got the $5,000, I don't know whether he got it or not, I am not sure.

The new Shochtim Union was organized in 1927. Charles Herbert and Joe Weiner are now the delegates of the Shochtim Union. I don't remember who put them in as del-ates. *Maybe Benjamin Simon did.* I don't know. I wasn't there. The delegate of the Shochtim Union before Charles Herbert and Joe Weiner were made delegates, was a man by the name of Walsh, something like that. I don't believe I spoke to him once. I don't know the other man. I don't know if there were two. I think the Shochtim that I employed joined the new union when Charles Herbert and Joe Weiner became the delegates. I know they are union men; I wasn't interested how they joined or what they joined. Who can remember what was three years ago. You think that is all I got to worry, is about the Shochtims, I am worrying how I can get a living.

I couldn't tell you whether Benjamin Simon had any control over the new Shochtim union. I don't know whether Benjamin Simon was the big boss of the Shochtim Union or whether he gave orders to the new Shochtim union, I couldn't tell you that, or to Charles Herbert or Joe Weiner.

What marketmen in Brownsville made the arrangements whereby the Brownsville marketmen paid the small marketmen sums of money per week, I couldn't remember. I didn't. Gordon may have. I can't tell you for sure.

I never had any dealings with Harnett. Maybe Morris Gordon did. All I know, I was getting money. Who made the deal with them, I don't know. Samuel Lipkin and

Morris Gordon collected the money. They used to give [fol. 369] me what was Benjamin Simon's share, $350, something like that, whatever came out as their share. I never handled any more money. Sometimes they brought it themselves there.

There wasn't any meeting which decided they should pay $300 a week on 30,000 pounds. First it was checked how much poultry is sold and they figured up how much they needed to pay out, that is, how much they collected and they made a price that everybody was satisfied. It had to correspond with the paying out and collecting just as much. Nobody kept anything. For the first week, they divided the $5,000 on a percentage basis, at a Chamber of Commerce meeting. What percentage Brownsville was to pay of the $5,000, I don't remember. I don't even know how they got the $5,000, to tell you the truth, I know I didn't pay*ing* anything to it. I never collected any money and I told you that I wouldn't or didn't atte*nd*-. All I was interested was to get what Benjamin Simon was entitled to get and that is what I took. If they gave it to me, I took it. If they didn't give it to me, I told them I didn't get it.

At the time that Benjamin Simon got $5,000 for one week from the various boroughs, I was receiving $150 a week. I got one week $500. That was from Willie Simon and Louis Cohen and not from Ben Simon. They brought it to me in the market. Willie Simon and Louis Cohen were doing business in Harlem. I don't know who paid the money. The payment was made, because I couldn't make a living. I didn't do much business, I couldn't cover my expense. I gave them nothing. I told them it didn't pay me to go into the deal because I am not making a living. [fol. 370] No one told me and I did not tell anybody that if I paid money to my association, I could raise the price on poultry and make up for it several times. I was not told that by Benjamin Simon. I wouldn't swear to it, but I don't believe he ever told me that. I didn't go back to the borough meeting and tell all the market men that they could do what they pleased, whatever they agreed among themselves, nobody was bossing. Benjamin Simon used to get $2,000 a week. I never paid anything. He used to take what I got. I told you, about $400, or $350, maybe $420, something like that, a week.

The collections in Brownsville continued about a year or so, and payments to the small market men continued during that same period. No one got any money for making the collection in Brownsville. Morris Gordon got $500 a week. At that time Benjamin Simon wasn't there.

At that time $1,600 was paid to Eddie Bloomstein. This was about two weeks before Benjamin Simon came in. We paid to Eddie Bloomstein for two weeks, and then we started paying to Benjamin Simon. After he came in the office, I don't know how long it was, we paid to Eddie Bloomstein about 14 or 15 hundred dollars a week. From Brownsville, I don't know what he was supposed to get. I think he was a commission man. He wasn't in the Chamber of Commerce office. The payments were made to him in West Washington Market, on the street.

Morris Gordon and Louis Cohen and a couple of men from Brownsville gave me the money and they said "Take this over there", and I brought it to Bloomstein and he took it without saying anything. I don't think that at that time the customers had been divided in Brownsville. I don't remember that. At the time I made those payments [fol. 371] of fifteen or sixteen hundred dollars to Eddie Bloomstein for two weeks, I was taking off my $500 per week. I was told I could have $500 of that money by Louis Cohen and William Simon.

I have seen Charles Herbert or Arthur Herbert in the presence of Eddie Bloomstein, in the street maybe. When I go down there I don't watch whether they talk or they don't. I did not see Eddie Bloomstein talk to either Arthur or Charles Herbert during the time that I was making the payments. He never let anybody see the time when I gave it to him. He took it on the street. I don't believe Eddie Bloomstein had a great deal of influence with Local 167 and the Shochtim Union at that time. If Tootsie Herbert could put another man on, he would put another man on. That is the kind of influence you would have with them. They did not tell me what became of that money. Nobody ever told me. I don't know that either Arthur or Charles Herbert were getting any of that money. They never got a nickel. They tried to get $5 a day more for the men, so why should I give money to them yet. I could not tell you whether Eddie Bloomstein at that time was collecting

from one of the boroughs. Benjamin Simon was never present when I paid the payments to Eddie Bloomstein. Simon didn't belong at that time yet.

When I stopped handing money over to Eddie Bloomstein, I started handing money over to Benjamin Simon. After Benjamin Simon became Supervisor, I got $150 a week salary, for a year as president. I talked to Arthur Herbert and Charles Herbert during that time. Sometimes. I deny that I told them to stop loading poultry for [fol. 372] particular market men. Every market man that wasn't loading, every man that was ever stopped from loading poultry was on account he did not have no union man, he wasn't loaded. If it was me or somebody else, if he had union men, they loaded that is all. I never violated the rules. I always got the same man, even now. I didn't have any strikes because I complied with the union rules. A man that has got one union man and three colored men to work for him, then, of course, we pick on them. If I got union men, I want the next man to have union men.

Gordon gave the payment direct to Benjamin Simon sometimes. I never told Benjamin Simon, Arthur Herbert or Charles Herbert, who wasn't paying money. I never told him anything. What did they have to do with those. I never sent any messages or telephoned to either of them, what marketmen were not paying. The only time I called the union was on a holiday, I would ask them "Until what time is the men going to work the next day", and nothing else.

Q. Do you know who it was that kept the union informed or kept Arthur Herbert or Charles Herbert informed as to what market men were not adhering to the conspiracy?

A. I don't know, I wasn't interested in it.

Mr. Perlman: There has not been a bit of evidence here that any one ever complaint to the union of the failure of a market man to make payments. There is not a bit of evidence and I object to it.

The Court: Overruled.

Mr. Kaufman: I object to it on the same grounds.

The Court: Asking the question is no proof, but I am permitting this man to be examined, as an adverse witness. Overruled.

Mr. Perlman: Exception.

[fol. 373] The Witness: I couldn't tell you who kept Arthur and Charlie Herbert informed as to what market men were not behaving themselves, because any man that did it, and if he did that, he would not let me hear that.

Louis Spatz never showed me a paper indicating how much he had collected from the Bronx, and I don't remember his telling me.

I complained to Benjamin Simon after the customers had been divided up that I was not getting enough business; "What can I do," he says. He did not help me out any. I think he said something about letting me grab a few customers. I am not sure. I don't remember Benjamin Simon saying anything about letting me take a few customers from other market men. I don't know whether at that time I took some customers who had been purchasing poultry from Taits and from miscellaneous other market men in Brownsville; I don't know; maybe I did; maybe I didn't. I don't know to whom the customers belong. We never took the track of it. I didn't take care of it.

Whether Philip and Meyer Oster ever refused to make payment to the collectors, I didn't know, I didn't collect I told you. I did not report to the Chamber of Commerce or to Benjamin Simon that Meyer Oster would not pay. The Chamber of Commerce had nothing to do with that. I did not report that to Arthur or Charles Herbert. What have they go- to do with that. I accompanied Benjamin Simon to the office of the State Attorney General. That was the time when they started to make that exchange office. He said after we came out, "Everything is all right". I said, "What is all right". He says "All ~~right~~". I suppose he wanted to convince me that he had influence with the Attorney General's office. He did not tell me that he was making payments to that office. He never told me [fol. 374] to whom he gave m*eony*, never mentioned anybody's name. He said "Come on along with me". I went along with him. He went into a room. He came out and he said "Everything is O. K." At the time that Benjamin Simon went up to that office, he went into a private office himself. There was some one else in there. I did not see who it was. I was sitting outside.

I don't remember whether B. Taits closed up his market in 1927 or 1928. He kept close a couple of weeks because it didn't pay him to do business, because we paid

him money. He said "I don't do enough business and if you want to buy out my business, I will sell you my business." I think he got three or four hundred dollars a week. His customers went wherever they pleased. Benjamin Simon had nothing to do with the payments being made to Taits. I never said anything to Benjamin Simon about collections. He had nothing to do with that. I never complained to Benjamin Simon that Taits didn't want to pay enough money. Benjamin Simon did not say anything to me about straightening out the difficulties with Taits. I don't remember that Benjamin Simon was made a co-defendant along with me in a suit brought by B. Taits. I didn't pay anything to B. Taits after the suit was settled. The Chamber of Commerce never paid anything to B. Taits. They paid in my presence. It is hard for me to remember who was there. I think Morris Gordon, Benjamin Simon and Louis Spatz were there at the time we settled with B. Taits. Benjamin Simon did not pay the money to B. Taits. Some of the market men paid it. I wasn't interested how the money was gotten, where it was gotten and I didn't pay a nickel. Ben Simon couldn't pay a nickel out of the Chamber of Commerce office because every nickel [fol. 375] was taken care of and everything was paid by check.

Mack Harnett never paid a nickel. He always collected. I didn't pay him anything. The Brownsville market men paid his father $200 or $250 a week. I suppose he promised not to sell wholesale, I don't know, I didn't have any dealings with him; I didn't make no bargain with him. I don't know that they were caught selling strange butchers. I didn't have any dealings with them and I wasn't interested. I don't know that that Harnett could not purchase poultry in West Washington Market for some period of time.

At the time Mack Harnett was trying to get poultry in West Washington Market, I went to Ben Simon and said that someone would get killed yet for all of this trouble. I said it was going around too much trouble. I said, What is it? He said "I don't know." I says, "You don't know?" he says, "I don't know". I said somebody was going to get killed in this game. When I said game I was not referring to dividing up customers. What has customers got to do with that. I saw Philip Harnett up in the office and he hollered to Ben Simon, and he says "What

is the matter I don't get poultry?" Simon said, "Maybe you got trouble with the union. Have you got union men?" I don't know if he had union men, if he had union men he got poultry. This is no question. I suppose he had no union men, so he didn't get poultry, I don't know. I didn't tell Benjamin Simon on that occasion that I was afraid. I said I was sick and tired of that business of being together with the market men and dividing up customers and collecting money. And I told Benjamin Simon that I wanted to get away, because I didn't make a living anyhow. [fol. 376] I told him "This thing is liable to lead me yet to jail". Benjamin Simon said "Nothing will happen to you. Don't be yellow", something like that. I asked him to break it up. He told me "Don't be yellow, nothing will be done". I said "I don't want to have that business. People coming up and hollering. If anybody has something out of order, they are bringing the blame on me. They say "If you are the president, you can get me poultry". I said "What have I got to do with this?"

Somebody told me Harnett had a fire. I didn't say anything to Benjamin Simon about it, but at nine o'clock I think, I see a private citizen with Harnett or his mother, they came into my place of business and said to me, "Hirshon, you are the president, you ought to know who made the fire." I said "If you will do me a favor, you can get out of my place, I don't know about fires. I think it was one of the sons. I was the president, and he said I ought to know who started the fire. I said "I am president maybe I can tell you who robbed the United States". I said, "What do I know about fires?" So they walked out of my place.

I don't remember that Mack Harnett had a strike at his place of business at this time, maybe he did, I think he did. I think the shochtim with the men were on strike. I don't know if he had men. I did not call a board of directors' meeting after Harnett had a fire in his place. Why should they have meetings on Harnett or from somebody else? He wasn't so very important that we should call meetings for him. Benjamin Simon did not tell me that he had to pay Joe Weiner $50 a week. He never wanted a nickel for them kind of fellows from our Chamber of Commerce. We don't like them to give them any money yet. Simon did say something about given Weiner, a chicken dealer, $50 a week.

[fol. 377] Direct examination continued:

The Witness: During the Jewish Holidays in the Fall of 1927, Benjamin Simon did not ask that the amount of contributions to him from the various boroughs be doubled. At that time the boroughs were not paying $4,000 or $5,000 per week to Benjamin Simon. The amount at that time was not raised to $8,000 or $10,000 per week. Benjamin Simon did not say anything about needing double or more money for the holidays, nothing whatever. I never said that Benjamin Simon said he wanted double, and that he wanted $10,000. I don't remember that during the Jewish holidays in 1927, I had a meeting with Morris Gordon, Harry Rubin, Jacob Mintz, Abe Franzel and Isaac Kaplan, and several of the other market men. I had no controversy with B. Taits about that time. I did not take any of his customers. If I could get them why not. Somebody got them. Do you think I followed up customers and found out where they went to? If they came in I sold them.

I had a conversation with Benjamin Simon about breaking up the Chamber of Commerce. I don't remember the day or the year. He said he didn't want to. He didn't mention any protection. He never told me he was going down to Washington and fix it up, or that he was going to see Ottinger. He didn't tell me from where the man comes. He said that was one of his friends that went to Europe. He never mentioned names. He never told the names. He says a friend of mine went to Europe, and he will come back and everything will be all right. He didn't say no straightening out with this man and he didn't say no fixing it. He didn't say who he is. He never said he was a public official or a lawyer. I am telling Ben Simon break [fol. 378] this thing up. It is no good. He says to me "What are you worrying? My friend went to Europe, and when he comes back everything will be all right". So what more can I tell you? I never seen the man. I don't know even if he had a friend that went to Europe. I believed it.

When the settlement with B. Taits was made, Morris Gordon was there, Louis Spatz and I were there. At the time the settlement was made, nothing was said. I didn't even interfere in any settlement. I don't know what kind of settlement they made with him before. Everything was ready. I don't know how much they paid him. I know he

got money. I didn't give him any money. I don't know who paid the money. I think there were some notes. I think three or four of us signed the notes. Benjamin Simon, Samuel Sahn, Louis Spatz and I. I am not sure, I think it was $2,500. I don't know to whom it was payable. It was handed, I think, to a counsellor or somebody. I know it was not handed to B. Taits. I don't know how much was paid in addition to this $2,500 note. Louis Spatz did not give me any money to give to B. Taits, or his attorney, at this conference. I did not make out a check for $5,000 and receive in return for it $5,000 in cash. I don't know that $950 was ultimately paid in cash by Louis Spatz. They gave him money, but I don't know how much, because I didn't pay anything towards it, I wasn't interested to know.

I told Ben Simon to break up the Chamber of Commerce when he told me about the man going to Europe. I says, because we ain't making a living anyhow; about getting killed, I didn't say it.

I recall that Harnett had a fire in his market, but I don't [fol. 379] remember the year or whether it was after the settlement with B. Taits. I don't know what happened there. I was never told. I think Benjamin Simon offered a reward for any information as to who had set that fire, but I am not sure.

I know Ida Frank, a market woman, in the Bronx. She and I. Frank are husband and wife. I don't know that they both run the market. I don't know that Ida Frank refused to pay money to the collectors in the Bronx in 1928. I didn't belong in the Bronx. I asked Benjamin Simon why the unions took their men out of Ida Frank's market. He says "I don't know". I said "What is the reason?" He said "I don't know myself". We asked the delegate, Arthur Herbert. We sent for him. He said he had some trouble with the union labor and that is all and that finished up, he said he had nothing to do with the union. I don't know that at that time Ida Frank refused to make payment. The union had nothing to do about paying and about taking off men. I wasn't interested if Ida Frank paid or if she did not pay. The only time a man had trouble was when he had trouble with the men, not about money, what have they got to do with the union men. She was once up in the office of Benjamin Simon, once or twice, I am not

sure. They talked by themselves in a private room. I asked him what Ida Frank wanted and he told me she had some trouble with the men. He did not tell me Ida Frank had refused to make payments. I said "What is the reason with them?" And we sent for Arthur Herbert and we talked it over with him and he said she had some trouble with the men about overtime. Ida Frank runs a market in the Bronx and I run a market way over in Brownsville. I had to do with straightening out trouble in markets, [fol. 380] because I was from the organization. I wanted to see that everything was all right. She came in and she hollered she wants to talk to the president, she wants to see what is the matter with the union. She said "You are getting $150 a week for what? For nothing?" I think that was my duty to ask her. Louis Spatz never told me that Ida Frank stopped paying $350 a week. I don't think I went to Ida Frank's market with anybody to look at her books. I don't remember that. Maybe I went with Samuel Sahn to Ida Frank's market. Maybe I didn't, I can't remember that. I don't remember whether Ida Frank ever showed me her books. Who can remember? That was three years ago. Who can remember with books. What have I got to look in her books for? Benjamin Simon never told me that if Ida Frank refused to pay they pulled the men out. I asked Benjamin Simon what is the matter with Ida Frank's men. He said "I don't know". I said "Why not call up the delegate and find out what is the matter?" We asked him please to come up and he told us something was the matter with the men, maybe she laid off the men, maybe it was the overtime, I don't know what it was but I knew she had trouble with the men. The Chamber of Commerce did not pay Ida Frank $1,000 at that time. I never paid outside money, only to those that work in the office. I don't know whether Benjamin Simon paid any money. Maybe the directors of the Chamber of Commerce paid her money. What I remember, I am telling you. What I can't remember I am not telling you. I don't know how much Ida Frank was paying to the collectors at that time. I couldn't tell you if she paid $200 or $2, that was Louis Spatz' business. He did not tell me what she was paying. It was none of my business what [fol. 381] she was paying him, what he was supposed to get, what he got and what he didn't get was none of my

business. I don't recall when the United States Government commenced investigating the poultry industry, whether in 1928 or 1929. I don't know whether at that time we were collecting the money in Brownsville. I was never collecting. I don't know, when it began. So long as the association began, they were collecting. It lasted all of the time I was president. I don't know if it lasted some time in addition to that. After I got out of the office, I wasn't interested any more. I don't remember when my term of office as president commenced. You got every paper and you got every book from the Chamber of Commerce and you ought to know. I don't think that at the time of the trial we were still collecting money. Whether at the time of the grand jury investigation we were collecting money, I don't remember, and I don't think so. I wouldn't say yes and I wouldn't say no. I don't know if it was after or before, I don't know whether any Government investigators were going around the poultry markets at the time that we were making the collection. I don't know, they were never in my place.

I know Jacob Bloom. He is a commission man. I know a Bloom who is in the Shochtim union. I don't know his first name. I never heard it. I don't know if he was ever one of the leaders or officers of the Shochtim Union. In 1927 and 1928, I did not make any payments to Bloom, and I don't know that any one ever made payments to Bloom. The Chamber of Commerce never paid any money, only to people that was employed. I don't know that he was receiving money from Benjamin Simon, or from the union. I know Morris Gordon. I don't know whether Morris Gordon was paying Bloom $100 a week. I don't remember, I never asked him. Maybe some one told me that Morris Gordon was paying Bloom $100 or some other sum of [fol. 382] money. I don't remember that, I don't know. You are asking me a thing that I can't think of it yesterday. I didn't tell Mr. Oseas that Bloom was getting $100 a week from Morris Gordon because he was the leader of the Shochtim Union. I never said it.

I know Kalman Shapiro. He was president of the Shochtim union, but I don't know what year. I think he was president at the time we were making the collections in Brownsville. I don't know if he was being paid any money, by any one. I never told Mr. Oseas that I saw

Kalman Shapiro get paid money. I did not see Morris Gordon pay Kalman Shapiro money. If I did see him, then I would tell you whether he got paid. I don't remember Morris Gordon ever telling me that he gave Kalman Shapiro money. It is impossible for me to remember what happened three years ago. Maybe he did, maybe he didn't, but I don't think so. But I never said it. I don't know that Kalman Shapiro was getting some of the money collected from marketmen.

I know Benjamin Danziger. He was in B. Taits' market, I don't know in what year, but it was at the time they were making the collections. I never said that if Danziger paid one cent a pound he would not have to take on any more union men. I never spoke to that man in my life while he was in the association. Benjamin Simon never told me the marketmen who paid one cent a pound would not have any union trouble. I did not send Benjamin Danziger up to see Benny Simon. And I did not tell him that if he wanted to know anything, to go to see Ben Simon, he was the Boss. I never spoke to him. I never told that to Sorkin, Danziger's partner. I never spoke to that man either. I don't remember telling Benjamin Simon to talk [fol. 383] to Arthur Herbert about Benjamin Danziger's trouble. What have I got to do with it. I remember B. Taits had a strike, but I don't know that he was given union men who wouldn't do any work for him, in place of those who were taken out. Benjamin Simon never said in my presence that B. Tait would have to employ the union men who were sent to him or anything of that sort. I don't think he had anything to do with men. B. Tait was paid $400 a week one time. To keep his business closed, he sold out. I don't remember when that was, and I don't know who paid him. I think it was Morris Gordon or somebody from Brownsville. I don't know that collections were so made in some of the boroughs up to the time of the trial in the criminal case. I told you before, so long as I was president there were collections made. After that I don't know. I paid to the collectors, but I don't think I paid after I ceased being president.

I know Abraham Goldberg. He was a chicken dealer in Brownsville. He was able to purchase poultry in 1927 and 1928. He had poultry. I don't know that he was unable to purchase poultry.

I know Morris Hellman. I don't think he was paying money to the collectors in Brownsville. I wouldn't say sure, but I don't think so. That man does a small business. I don't think he refused to sell to butchers and retail poultry dealers not allocated to him. Maybe yes, maybe no. I wasn't interested in what he did.

The marketmen in Brownsville when they first started agreed that they wouldn't sell to any customers who were not assigned to them, but we never kept it. After, everybody took customers as they pleased. I know that on information filed against the defendants, but I don't remember the years and the dates. I don't remember when [fol. 384] the government started its first suit. Whether at that time we were still collecting money in Brownsville, I don't remember. For any other boroughs, don't ask me, I wasn't interested.

Benjamin Simon used to say he was going to Washington, but who knows where he went to. When he came back, he says everything is all right. He had nothing to do with customers, I told you. He didn't worry if collections of the money were all right. I think at that time he went to Washington, but maybe he went some place else. I didn't see him but somebody said they seen him but not in Washington. I can't remember who said that because he never went there. Therefore, I am telling you the same like the man in Europe. Benjamin Simon told me at the time I made payments to him that the men whom he had to pay were downstairs. That is all he said, I never checked up on him to see if the men were waiting downstairs. I don't know whom he made payments to. I wish I did know. I don't know that he made payments to some retail dealers.

I know a man by the name of Weiner, a chicken dealer in the Bronx. I couldn't tell you if he is one of the leaders among the chicken dealers. I am not interested in the Bronx. I know him because he was a market man at one time, otherwise I wouldn't know him. Benjamin Simon said he gave $50 to Weiner. For what, I don't know. I never seen him give it to him. If he gave him or not, I don't know. Benjamin Simon did not say that Weiner used to smooth things down at the chicken dealers' meetings.

I know Carl Firestone. He used to work for me. I suppose he is a member of Local 167. I don't know if he was

[fol. 385] hired at the time these collections were made, by Morris Gordon, to go around and check up on the markets. That wasn't my affair. I don't know that Morris Gordon paid him money. I don't think so. Morris Gordon never told me he did. Firestone was paid money by Jacob Koslow, but not Carl Firestone. Samuel Lipkin was paid by Morris Gordon, because he was a bookkeeper. Lipkin collected money in Brownsville, sometimes. Morris Gordon used to tell me. I don't know. He was paid I think $100 a week or something like that. I don't remember. By Morris Gordon. I suppose that money came out of the collections in Brownsville. I don't think that Carl Firestone was ever paid any money out of collections in Brownsville. Jacob Koslow and Samuel Lipkin were paid out of the moneys collected, but I never mentioned Carl Firestone. Jacob Koslow was paid, I think, $100 or $125 a week, because he did the same like Samuel Lipkin. He collected from the market men in Brownsville. I don't know who paid him.

I know Julius, Sidney and Murray Rosenstein, all by sight because I see them down in the market. I don't know where they worked in 1927 and 1928. They never were in Brownsville. What do I know if they were paid out of the moneys collected in Williamsburg and Borough Park? I had no business there.

I know Barney Heckt. He is a market man. He told me that he wanted to change his shochtim. I told him I had nothing to say over that, and to see Charlie Herbert. I don't remember if I talked to Charlie Herbert or not, maybe I did, maybe I didn't, but I don't think so.

I know Hyman Nierenberg, a market man on the East Side. He was paid money for his promise not to do a [fol. 386] wholesale business. I couldn't tell you how much. I don't know that his customers were bought out by Abraham Wolff. I don't know what was done in the different boroughs. He never told us who paid him. He said he was getting paid to give up his entire business. He gave up his slaughterhouse and he went to kill somewhere else. He did retail business after that.

I saw William Roth of Newark, New Jersey, at West Washington Market. He came up in the office. Benny Simon was there, and I think Willie Simon. He claimed he came down the market and he couldn't get any poultry.

And we told him "What is it our business"? Ben Simon asked him "Why, what is the matter?" He says he can't get any poultry, and he says "What do you want me to do? You want me I should go and get it for you?" I says, "I suppose you ain't got no union men so you can't get no poultry". Otherwise, everybody gets poultry. Without union men, he says, you can't get no poultry. He says "What do you want from me?" He says "You live in Newark, why do you ask me why you can't get poultry".

I don't remember anyone at that time telling William Roth that he would have to stop underselling in Newark. We answered him in short words. We told him we have nothing to do with union labor. If you ain't got the poultry I suppose you ain't go no union shochet. I did not know at that time that William Roth was a large marketman in Newark and that he was selling under the prices of the New York market. That was the first time I ever seen him. It was never called to my attention. I don't know what they did in Newark, whether they were combined or not combined, I wasn't interested. All I was [fol. 387] worrying about was Brownsville. I don't know that they split the profits among themselves at that time in Newark. You are asking me things what is doing in Newark just the same as you are asking me what is doing on the other side. We did not tell any shipper not to sell to William Roth, and I don't know whether anyone ever told any shipper not to sell to William Roth. I did not know that William Roth was importing poultry by carloads from shippers at that time. The only time I knew that William Roth was unable to purchase poultry at West Washington Market was that day. After that I never seen the man. I don't know if he got poultry that day or if he didn't, I don't know whether William Simon helped him to buy poultry secretly, and whether William Roth was told that he would have to charge the same amount that the other marketmen charged in Newark. I don't know. I did not offer to make any compromise with William Roth. I have nothing to offer, I didn't belong then. Whether William Simon and Benjamin Simon offered him a settlement, I don't know, I wasn't there, I wasn't interested. What have I got to do with Newark?

Joe Usim was not on the payroll of the Chamber of Commerce. Whether he was on the payroll of the union on

the East Side or was paid money out of the collections made at Coney Island, I don't know.

I did not accompany Arthur Herbert to Philadelphia. I have been in Philadelphia. I have never talked to Alfred Levitt. I know Max Levitt and Alfred Levitt. They come to West Washington Market and bought poultry once over there. I did not tell Alfred and Max Levitt not to sell poultry to Newark marketmen. I was only there one time. Maybe Arthur Herbert was there but I wasn't with him. Maybe he was standing alongside of one of the stores [fol. 388] when I was buying the poultry. I wouldn't swear yes or not.

The marketmen in Brownsville never charged one price. I never agreed to charge five or six or seven cents per pound. I sold for as much as I could get. No marketmen ever agreed in my presence that they would raise the price. I don't know if they talked about charging more so that they could make more profits. I charged my price. I attended the meetings in Grable's Hall, but we didn't talk about prices.

Cross-examination.

By Mr. Kroppy:

I am a defendant in this case. All these things about which I have testified as having taken place in 1927 and 1928 when I was president of the Chamber of Commerce and when we had these meetings over at Brownsville, were stopped more than two years ago. I think it was right after I quit being president of the Chamber of Commerce. I am not sure, maybe a month more. I know it is about two and half or three years, maybe, and since that time I haven't heard of any meetings by marketmen in Brownsville or anywhere else. I haven't heard of any marketmen refusing to sell poultry to anybody. We are glad to get the customers. Sometimes I have heard of poultry being refused at West Washington Market or at the railroad terminals since that time. A man may come in with a non-union man who would positively not get poultry, me or anybody else.

Mr. Kroppy: Same motion to strike out this witness' testimony.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 389] MORRIS TEITLER, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

(The following testimony, given at a trial in October, 1929, by the witness was read in evidence, by stipulation, subject to objection and exception as to its competency and materiality:)

Direct examination:

The Witness: I am a butcher and poultry dealer. I was in business for myself but not now. I was for fourteen years in business in Brooklyn. It was in July, 1928, when I went out of business. I bought poultry in June, 1928, from Mamber & Pepper. I remember on or about the 28th of June, 1928, I had a conversation with Pepper. We were dealing together for the last ten years, and they used to charge me five cents above the market. And then there came a time when he charged 10 cents above the market. I told him I could not afford to pay it and he said I could go any place else. I told him a couple of times "I will go", so he said "Go ahead; I ain't stopping you." I went to different places. I was going to Rockaway, and I got stuck. It was five cents a pound cheaper than I paid him.

The first time I went away to get poultry was Thursday morning, June 28th. I brought the poultry back to my store. I put up a sign and advertised my poultry for 36 cents. Mamber & Pepper were charging 39 cents a pound. I had paid for the poultry by going to Rockaway, 29 cents. I put out the sign and so Harry Herbert came in and he told me I should take the sign out of the window. So I told him I couldn't take the sign out because I had stuff to sell; this is a market place, and if I would not put the [fol. 390] sign out nobody will come in. He said "It is not nice for us you should keep the sign in the window; nobody got a sign in the window". I said "I got to sell my stuff". So he walked out. He walked away and then came in one by the name of A. Miller. He told me the same thing. So I told him I can't take the sign out. He was one of the agents of the poultry dealers. He said I should take the sign out of the window. That I should not sell stuff that way. I said I would not take the sign, that I got stuff here and I got to sell it. He did not say anything; so he walked away. So they came there, they returned with

a car, Sidney Rosenstein and Dave Kaufman. Those were the two people, told me to take the sign out of the window. They didn't say anything where they were from. So I says, "I cannot take the sign out of the window, because I got stuff to sell and I am going to keep the sign in the window". So one of them says, "You had better take the sign out of the window, because I am going to blow your brains out". He told me "if you are a wise guy take it out of the window". I said I would not take it out; so they started to give me a bawling out and then they left. Then they came back and one had some car outside, it was Sidney Rosenstein, and then Kaufman passed with a cab and they looked in the window and went away. I did not see them until the next day.

The next morning they came back and asked me why I did not go back to Pepper to buy stuff. I said that it was my money in there and he charged me too big a price and I cannot sell the stuff that he gives me because I cannot charge more. He says, "It is all right, he will give you for a lower price". So I says "I do not need stuff now", that was Friday, "and I cannot get this any more". He says [fol. 391] "All right, go on". I says "I am not going back for there is no use going, I can get stuff cheaper". One of the fellows said "Don't be a wise guy and go and kill your own stuff". I says "I won't go back to kill there; I will get my stuff somewheres else". So Sidney Rosenstein said "You are a wise guy, and we are going to blow your brains and see whether you will go back". I says, all right. So then, Kaufman says in a nice way "Is that your car?" I says, "No". So he says, "You better go back to Pepper and kill the stuff, otherwise we are going to blow your brains out". I said "Go ahead and do that". So they went away. So I went back to the store. During the conversations my wife was standing right near.

I went over to the car and as soon as I opened the hood I seen it was stuffed up, where the oil goes in, with black stuff like sand, so I went over to the corner and called over the cop from the beat, and they took the stuff out and I cannot start her any more. She could not pull any more. When the detective picked up two fellows and took them down to the station house they asked me if they pay the damage—that is two guys they were at the store, and so

they went away. I went back to the store, and they came back, the same men, Sammy Sahn and A. Miller. There were also A. Miller and Joseph Rosen. When they came in, four of them, they asked me how much damage was on the car. That was about a week later. So I says I was down by the Packard people and they gave me an estimate of about $280. So I says, "If you want to pay $280 all right, then it is up to me". So Sammy Sahn takes from his pocket $200 and says "Here is $200, and if you want to take it all right, and if not, you will get nothing". [fol. 392] So I did not take the money and they went away. I did not have any further conversation with any of the defendants about it. This conversation took place in my place of business. I had a conversation at the place of business of Mamber & Pepper about it. Pepper called me down, sent over one of his men and he took me down to his place. I went upstairs and he told me if I will get $280 if I will not press the charge against the fellows. I says "If they pay me I will not press any charge against them". And he said, all right. Meanwhile, the others had come—I says, "I am going home; if you want to see me come over to my place." So one week, they came, Sam Mamber and Sam Sahn and A. Miller and Joe Rosen, they came in, the four of them. My wife was present during this time when they came in. That was the second time she was present. I was in the place of business of Mamber & Pepper after the car was injured; was in the washroom of that place of business. I saw standing a can with black stuff in there and I saw it was the same stuff that was in my car. They came there and they told me how much they done damage $280; Sam Sahn says "I am not going to give you any $280". I told them I would not take any less, and I am not going to lose $80. He says "Do you want to take $200, and if you would not take $200, all right". I said, all right, I would not take anything, and they went out.

Cross-examination:

The Witness: This occurred June 29th, 1928, and I had been buying from Mamber & Pepper. This is Williamsburgh, Brooklyn. He advanced the price of chickens to me, and I complained about it. I told him I would go some-

where else and he said go anywhere you want to and buy your chickens. He was perfectly willing I should do it. He invited me to do it. I did go to Rockaway and buy, and [fol. 393] I got chickens for 29 cents. He was selling for 39 cents. I paid 29 cents and sold for 36. I was is the retail business. The market price was at that time 24 cents. I was paying five cents more at Rockaway.

I had a sign in my window that I was selling for 36 cents and a number of people came down and protested about my displaying that sign. Among those was A. Miller. He was general manager of the Butchers' Association. I was not a member at that time.

That day I claim the machine was damaged there were two men. One of them asked me if the car in front of my place was my car and I said "No." So they went away around the corner. They knew my car but they made believe that they did not know which my car was. That was all that was said about the car, and later on, after my wife had gone down to look at the car, I went on down and found something that looked like sand in the engine, and then later on, in the washroom of Mamber's market, there was an oil can with black sand. I went into court about it and I testified. They were discharged.

It isn't a fact that I asked Sam Sahn to come over to my place to see me and that I told him that if he gave me $300 I would not press these charges, and he told me to go to hell. I never saw Sam Sahn.

I was a member on the 29th of June of the Retail Poultry Association. Mr. Rosen was vice-president of it. A. Miller, about whom I have testified, was general manager. He was one of the men that came in and complained about my exhibiting this sign. I didn't have any trouble with them. The one I bought from in Rockaway I do not know. He did not want to give me any credit. I [fol. 394] paid him in cash. This association of which Mr. Rosen was vice president did not have any rules or regulations about prices that we were to charge. There was no prices made. The exact date that I bought this poultry at Rockaway was June 29th. The market price was 25 or 24 cents that day. I bought fowl for 29 cents. During this period chicken dealers charged various prices for their poultry. I did not see anybody do anything to my car. All I saw was when I went down, I saw something that

looked like sand in the washroom up at that market. That is all I know about the car.

I was making a seven cent profit. I was buying and selling dead chickens. There is no shrinkage on dead chickens. I could not go any more to Rockaway because I couldn't go any more with the car.

[fol. 395] MORRIS TEITLER testified at this trial as follows:

Cross-examination.

By Mr. Kroppy:

The Witness: I am a butcher. I sell live chickens to housewives and consumers since 1927. I buy my poultry from marketmen in Brooklyn. I haven't had any trouble in buying poultry since the Fall of 1928, and have been able to buy poultry wherever I pleased since 1928, without any interference by marketmen or by any of the union men. I do not know of any marketmen having refused to sell any other retailer in Brooklyn, or anywhere in New York. I do not know of any threats that marketmen or union men have made to retailers or anybody else in regard to the selling or buying of poultry.

[fol. 396] ANNA TEITLER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

(The following testimony of Anna Teitler, *was* given at a trial in October, 1929, was read in evidence pursuant to same stipulation, subject to objection and exception as to competency and materiality:)

Direct examination:

The Witness: I am the wife of the man who just testified. I was in my husband's place of business on the 28th day of June, 1928. My husband went ahead and got poultry somewheres else and when he came back he put a sign in the window selling his stuff for much less than anybody around there. In a little while Harry Herbert came in the

store and he told him to please take off that sign, not to cause any fuss or arguments around here, and my husband told him he had killed enough stuff and has to get rid of it and he has to keep that sign up, so he told him to please take it off and he went away, so Mr. Miller came and he asked the same thing and he told him he has to keep the sign up. Then Dave and Sidney Rosenstein came around in the car and called my husband over and told him to take the sign out of the window. I walked right out and he told him he could not take off the sign because he had to sell his stuff, so they told him if you won't do it in a nice way they will blow his brains out. So they started to threaten him and went away. The next morning they came around again and told him to take the sign off. He said he wouldn't do it, he had to sell his stuff off. They said, if you don't do it they will blow his brains out, and not be a wise guy. They said "Go back to Mamber & Pepper". Then they [fol. 397] rode away. My husband said "you see what they are going to do, because they asked if that was my car". So I went around the corner and their car was drawn up next to ours and they had the hood open and was pouring this stuff into the car. I memorized the number of the car and put it down with pencil and paper and ran around and told my husband.

When I wrote the number down my husband ran right over there and he got this cop to take this stuff out. I also saw what was in the car after I ran back; some kind of black stuff. It was in the oil gauge, I believe, where they pour the oil in. I was in my husband's place of business when some of the defendants came around to speak to him thereafter. It must have been about a week after. Sam Sahn, Sam Mamber and Mr. Miller and Joe Rosen came. Sam Sahn wanted to square it with him and he asked him what the cost of the car was. My husband had got an estimate. It was $280, and he told him about it, so he took out $200 and tried to give it to him. My husband refused to take it and wanted $280. He said "If you don't take that you don't get anything". So he didn't get anything. Nothing was said about $300 at that time.

Cross-examination.

By Mr. Sager:

I know about the charges that were brought against these two men for damaging that car. They were brought into the court in Brooklyn.

Cross-examination.

By Mr. Kauffman:

My husband had Dave Kaufman and Sidney Rosenstein arrested. And there was a trial in the Magistrates' Court in Brooklyn. I personally saw them putting this black stuff in my car. My husband called a cop. I had never seen these men before. I saw them come into the store those two days. Rosen has a store right across the way from our store. We were both selling the same kind of product [fol. 398] at retail.

Mr. Kroppy: I make a motion to strike out the testimony of these two witnesses on all the grounds previously urged as to the testimony of like character introduced yesterday.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 399] Anna Teitler testified at this trial as follows:

Cross-examination.

By Mr. Kroppy:

The witness: I am the wife of Morris Teitler. I heard the testimony of my husband just gave. You are asking him now whether he is having any trouble. At this time he is not in business any more. He went out of business towards the end of 1928. He is working for another butcher. I have had nothing to do with the poultry business since the Fall of 1928, the time I had trouble with them. I am at home now, so I do not hear anything I have not been anywhere else. I have been right in my own home.

Cross-examination.

By Mr. Kaufman:

That trouble I had was in the end of June, 1928. That was the only time I had any trouble. And since that time I did not have any trouble.

[fol. 400] LILLY HOROWITZ, a witness called on behalf of the Government, being first duly sworn, testified as follows:

The following testimony of the witness was given at a former trial in October, 1929, and was read in evidence pursuant to stipulation, subject to objection and exception as to competency and materiality:

Direct examination:

The Witness: I had a business. Now I have no business. I was in dead poultry business in June, 1927, in Brooklyn. I bought poultry in June, 1927, from Charlie and Izzy Kaplan. They took from me 40 and 43, two cents more than the market. I did not have any conversation with any of them as to the prices that they were to charge me when I first started to buy there. They promised to sell me two cents above the market. They charged me two cents above the market about four months. Then they charged me four cents. I cannot tell you exactly when it was, maybe four or five months after I first started to buy there at two cents. I said to them "Why do you charge me now four and heretofore two cents." They *they* said "Now me have a corporation, we will have to charge you more money". Charles and Izzy told me that. I spoke to them and cried to them. I asked them to reduce the price and they said it couldn't be done. Sometimes they charged me five over the market and sometimes six. They told me to charge 43 or 48 or whatever price I could get. When they said 43 or 48 the market quotation at that time was 29. This conversation was after the Passover holidays of 1928. They all told that to me; they were all together. I had a conversation with Jake Koslow sometime in the summer of 1928. He said "A penny I have got to have for that gang". He gave me the names. I can't re-[fol. 401] call the names of all of them. Totsie and his brother and others, and I cannot tell the names.

When people in the Prospect Market spoke to me about the corporation, they did not use any other word besides corporation. They just said corporation. After the Prospect Poultry Market raised my price from two to four cents above market, I went to Taits. I had chickens slaughtered with Dworkin & Blumenfeld many times. I went to them after the corporation was formed. They did not sell to me. Dworkin said he would like to give it to me, but since it is a corporation he cannot give it to me. Then I

went back to the Prospect and I spoke to Charley. He said "Now you are in my hands, I can take from you as much as I want". I don't know how much he took. He took as much as he wanted. I paid, I didn't know what to do, I couldn't go anywheres else. I was not able to sell. I lost my money and I went out of the business. I have been out of the business from that time one. One of the owners of the Prospect on the 16th of May, 1928, went by my market and he cursed me. That was Charley Bistretsky.

Cross-examination:

The Witness: At the time that the market price of poultry was 29 cents a pound I was paying five or six cents in excess of that. I was not able to sell it. I was able to sell it for 25 or 30 cents the highest. Because it was bad goods, I couldn't sell it. When live poultry was quoted in the market at 29 cents a pound, I was selling slaughtered poultry at 25 cents a pound. I couldn't help it, I had bad merchandise. I bought it, but since I am with the Prospect they never let me hold a chicken in my hand. They would not let me handle a dead chicken.

[fol. 402] In all other markets I did handle chicken, but in that market I did not. I went out of business because they gave me bad merchandise and I did not have money to pay the rent. I went out in August, 1928. When I went out of business, and at the times I have been testifying about, I owed the Prospect Poultry Company a bill for an unpaid balance. I don't know how much, they could have written as much as they wanted. I did not owe Sahn $770. I don't owe him anything. They charge we five cents more a pound in the Prospect Market and I took that off from the money that I owed him. On the merchandise that I bought from Sahn I was charged five cents more a pound than for the merchandise I bought in Prospect. I went back to Sahn and told him he was charging five cents more and that I would take off the five cents, and I therefore don't owe them anything. I don't owe Dworkin & Blumenfeld anything.

Cross-examination.

By Mr. Kaufman:

The Witness: I was here last year during the summer, and gave a report. I talked to Benjamin Bernhardt; he

isn't here. I saw Harry Herbert before in Prospect Place Market. I saw him when there was a strike in Garber's on the block. That was last summer, 1928. I never saw them before that. I saw them in the market when I came in to have some poultry slaughtered, and I started to cry, they were giving me bad poultry, and I was told to keep quiet. "Do you not see who is sitting here"? Charley said that. That was the only time I saw those two men, no more. I never spoke to them. I went to buy from Koslow, but he wouldn't sell me. No one wanted to sell me. I saw him only once. I went to see him when Taits closed his market. I asked him for merchandise and he said he doesn't want [fol. 403] to give me, and I told him that I am giving him money that he should give me merchandise, but he didn't want to. That was the only time I ever spoke to him. I asked Koslow for merchandise and Koslow said he wouldn't sell it to me. Nothing was said about collecting a cent a pound for the gang. Hirshon told that to me, not Koslow. Charley told it to me also. I saw Hirshon only once.

I went to him to ask for merchandise and he did not want to give me. I said to him "I will give you money, give me merchandise". He said "I do not want to sell you any merchandise". I said to him "Do you want another penny? I will give it to you". He said, "We have enough pennies, we collect enough". That is all, and I went out of the market. When he told me about the gang that was during the time I stood there, and cried at him "Give me merchandise", and he wouldn't give me. That was about the time that Taits closed his market. I don't remember the month. That was the time I was dealing at the Prospect Poultry Company. At that time I did not owe the Prospect Poultry Company even a penny; I paid them my bills. I didn't go back to the Prospect Poultry Company. They treated me badly, but later, I had to go back.

As soon as Taits opened his market he asked all dealers to come to him, so I also went to him. So I was doing business with both the Prospect and the Taits at the same time. Taits sold it cheaper, that it why we went to him. When he was opened I went over to him and later when he closed I went back to the Prospect. He gave only what he had; he couldn't make any better. He was only there a short time. Koslow's place of business was over in the same neighborhood.

[fol. 404] Mr. Kroppy: I make the same motion that I made as to the testimony of the other two witnesses.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 405] Lillian Horowitz testified at this trial as follows:

Cross-examination.

By Mr. Kaufman:

The Witness: I went out of business when I had the trouble. I went out, I worked for somebody else in the chicken business. I have been out of business for over three years, so I don't know anything about it now.

[fol. 406] David Scott, a witness called on behalf of the Government, being first duly sworn, testified as follows:

(The following testimony, given by this witness at a former trial in October, 1929, was read in evidence, by stipulation, subject to objection and exception as to its competency and materiality:)

Direct examination:

The Witness: I am in the poultry business in Brooklyn for five years and over. Between the fall of 1927 and the summer of 1928, the most stuff I used to buy in Louis Gold, the Clarkson Poultry Market. During that time I tried other places. I went in the Early Poultry Market and I slaughtered there on Wednesday morning and Thursday morning. Morris Brown (identified in the courtroom) and the rest of the fellows were there. I don't know their second names. I used to call them by their first names. Thursday morning I had my poultry down there. Couple of hours later I had a call from a shochet. He called me on the telephone, he said "Mr. Scott, don't come to slaughter here any more".

Then I went to Mr. Sam Sahn. I heard that he was president of Brooklyn Borough. Once I find him in the market, I said "Mr. Sam Sahn, please do me a favor, and move me from Louis Gold". He didn't give me a clear answer, didn't say yes or not, but he smiled. Then one time I came

to him, and I made an appointment that I should go back again to the Irving Poultry Company and I came to the Irving Poultry Company on Saturday to arrange that I should get my poultry, for Saturday night. One by the name of Louis—I don't know the second name, but he is [fol. 407] a partner in the Irving Poultry Company, he said he don't know anything. I said I made the arrangement with Mr. Sam Sahn, and finally he said "Call me up in a quarter of an hour and I will let you know." Finally I called up and he told me to come down and I will get my stuff. I come Saturday night and the shochet refused to slaughter the stuff. There was two shochtim but one shochet refused to slaughter stuff for me. I went over to the main boss, and said "Mr. Brown, you are the boss?" He said "No, the shochtim are the bosses". I said, "While I am here, Mr. Brown, they are slaughtering your orders, 200 heads out of 240 heads, and went me in 40 heads." He said "I am not the boss". Finally I went home and a neighbor of mine slaughtered for me that night that I should not have to shut my doors.

Then I find a place by the name of Salthe in the Bronx. It is a good distance to travel from Gates Avenue, Brooklyn, to 149th Street, Bronx. I slaughtered by Salthe. Then Mr. Sam Brown and Mr. Phillip Boperofsky took me in their car and they told me they got plenty of trouble from me, let's come to a settlement. They said "Where do you want to slaughter?" I said "It is immaterial to me, the only thing is take me from Louis Gold". I used to pay heavy money for what they called express stuff. Finally, Mr. Sam Brown said "Where do you want to go?" "Philip Boperofsky is a landsman of mine" I said, "I will go to Phillip Boperofsky." The next morning I went ahead to Phillip Boperofsky. I paid good money and I didn't get what I want. Then I heard on the street they were moving me back again to Mr. Louis Gold. Just ten days before Easter, Louis Gold's bookkeeper got me and told me "Mr. [fol. 408] Scott, you will have to come anyway back to us; come with a good will". I said I will come tomorrow to slaughter, because I didn't have nothing to lose. Then I went back to Louis Gold. He gave me a good deal for Easter, a couple of days back to Easter, and then he gave me such stuff that I did not know what I was doing. I got nervous that time and I am nervous yet. Then finally I

slaughtered around. I used to slaughter by Benny Kaplan, Freeman, and Myrtle Avenue. I saw Mr. Brown there a couple of times with Phillip Boperofsky. They didn't do anything bad about hurting or something like that, but the way I said before they did to me bad. They hurt my feelings. Whatever they did, I could not get my stuff.

I tried to get poultry in the Irving Poultry Company but could not get it. I was by Mr. Sam Sahn. He didn't offer me. I don't know what prices I was paying Louis Gold at this time for my poultry. I didn't have a record at that time. Everything was express stuff. I know one day I paid about 16 or 18 cents a pound more than I paid by Mr. Kaplan, and by Mr. Kaplan I had better stuff than I had by Louis Gold.

Cross-examination.

By Mr. Jacobson:

The Witness: After I had been dealing with Louis Gold for a while I went to see Sam Sahn. I had never bought any goods from Sam Sahn before that. It was about the Pass-over Holiday of 1928. I saw him a couple of times before the holidays. I stated before that I slaughtered a week before the holiday by Louis Gold. I don't remember Mr. Sahn telling me to wait until the holidays were over and then I could pick out anybody I want. After the holidays I picked out the firm I wanted to deal with. I dealt with that firm just a short while. I didn't ask Sahn to sell me [fol. 409] any goods but I asked him to remove me from Louis Gold.

The following testimony was given at this trial:

Cross-examination.

By Mr. Kroppy:

The Witness: I am still a retail poultry dealer at the same address. I had trouble all the time in 1928 in buying poultry. Before the criminal trial in 1929, we had trouble. With the union, I didn't have any trouble, because I don't come to the union. I am retail, and I slaughter, you know in the markets. Before they were associated, I didn't have no trouble. I could go anywheres I wanted, but when they got associated, before they were convicted, I had plenty of

trouble. I don't remember the dates, but before the trial I had plenty of trouble and after the trials we didn't have any trouble again. That is sure. The trouble continued until the trial. After the trial, we didn't have any trouble. Well, lately they start back again a little.

A couple of weeks ago, before it was in the papers that the charge of taking out an injunction, and as far as I know, I had a little trouble. I come in several markets. They didn't refuse exactly to give me stuff, but they asked me as a favor not to come to them. And now it has stopped again. That poultry business goes like a wheel, up and down.

Mr. Kroppy: I move to strike out the last statement, if your Honor please.

The Court: Overruled.

Mr. Kroppy: Exception.

The Court: It is fairly responsive to your question.

[fol. 410] The Witness: I didn't have any trouble, but some time they run short in one market, and when I go into the next market they give me a little stuff, and said, "Please don't come around here again". You know, as a favor, because I am plenty acquainted in Brooklyn with the market men, and nowadays I could go anywheres again. The fact is that I have been buying poultry from one market man all the time. When he was short I went to another market man, who sold me poultry but asked me as a favor not to trade with him any more. That is all that happened. I have heard of no market man refusing to sell other retailers poultry. I have heard of no other retailer having trouble in buying poultry, and I have not heard of any other trouble at all in the poultry business.

Redirect examination.

By Mr. Rice:

About that trouble I had two weeks ago, I came into the market, and they said, as a friend we will give you a little stuff. The market is the Johnson Avenue market in Williamsburg where I have my store. The proprietors are three, but the inside man is Charlie; I don't know the second name. I don't know the names of the other proprietors. I have been buying poultry from this Johnson Avenue Market before my visit two weeks ago, once in a

while when my market, the Beadle Street Market, didn't have stuff. There are three partners; one is Harry Herbert, brother of Arthur Herbert, Abe Rosenberg, and Dave —whose second name I don't know. I buy there for, I think about over a year's time. I used to go over often to Johnson Avenue Market, when the Beadle Street Market didn't have to suit me. I don't know whether the proprietors of the Beadle Market prevented me from buying at the Johnson Avenue Market. None of the defendants in this case told me that Harry Herbert or any of the other proprietors [fol. 411] of the Beadle Street had stopped me. They didn't mention any name at all. Charlie, one of the other partners there, told me—Mr. Scott, you are a friend of mine. I will give you that little stuff, but don't tell anybody where you purchased this poultry, and keep away.

I bought my poultry very little by the same Bennie Kaplan, since I am in business.

Q. Did Bennie Kaplan sell you?

A. A couple of weeks ago Bennie Kaplan was not in the place, but the shochet and the working men asked me the same favor as that Charlie, not to bother them. Of course, Bennie Kaplan was not in, I couldn't say anything. I tell him "I will do you that favor", and I went back to my Beadle Street market, you know, where I slaughter. I called aside Abe Rosenberg, he is the inside man, and I told him what is doing plain, you know. I went out and I told him what is doing, you know, pretty well, I go by Bennie Kaplan pretty often——

Mr. Perlman: Just a minute. Is Rosenberg a defendant?
Mr. Rice: No.
Mr. Perlman: I object to it.
The Court: Overruled.
Mr. Perlman: I except.

Q. Go ahead and continue what you were saying.

The Witness: And I said to Abe, they are stopping me off getting stuff back again. He says, "No, Mr. Scott, I don't know anything". I says, "You know very well, and if you will start up, you know, I was not lazy in that corporation to go to Salthe and anywhere else, then I should know.

Q. Repeat that. I do not think we understand that.

A. I went over back again to the Beadle Street, and I told the inside man, he should not stop me off from getting stuff from Bennie Kaplan.

Q. That is you told Abe Rosenberg?

A. Yes, because by Bennie Kaplan, I slaughtered stuff before he had ever been in business. He says, "I didn't stop him off to give you stuff", and I had with him, you know, a small argument, and I didn't say up to Bennie Kaplan for a good while, you know for a couple of weeks, [fol. 412] until you start, you know, in the papers, that it was out in the matter of injunction, and now I am getting back again by Bennie Kaplan all I want.

Q. That is when you read in the papers——

Mr. Perlman: Just a moment. I move to strike out all the testimony with reference to any conversation had with Rosenberg or what he read in the newspapers about it.

The Court: Denied.

Mr. Perlman: Exception.

The Court: As to the conversation, it will not be considered as evidence, the declaration by a third person, unless other proof in the case should bring Rosenberg into a conspiracy. If that other proof be made, then a declaration by him pursuant to the conspiracy or in furtherance of it, is just as much evidence against co-conspirators when he is not a party to the suit, as when he is a party to the suit; but in the event of the failure of the proof in that respect, namely, to bring Rosenberg in to the conspiracy, then the testimony will be by me disregarded and not given weight.

Mr. Perlman: Does your Honor permit into the record the statement of the witness? It certainly was irresponsive, that after he read in the newspapers about the injunction suit he got merchandise.

The Court: Yes, I will take that incident merely as fixing a date or tending to fix a date merely.

Mr. Perlman: Tending to fix a date of when he had this conversation with Rosenberg?

The Court: Yes, or the fact that there was change in the practice after there was a newspaper announcement of an injunction suit in connection with this matter.

Mr. Perlman: I respectfully except.

Mr. Kroppy: I object to it on the ground that there is no conspiracy here shown which would include Mr. Rosenberg, and therefore any testimony he gives is inadmissible

at this time. I understand the rule to be, before any declarations are admissible in evidence by individuals so it will be binding on the other defendants, the conspiracy, including the declarant, must first be proved, and that has not been done in this case. I am objecting to anything further.

[fol. 413] Q. Tell us some more about that conversation that you had with Abe Rosenberg?

A. There isn't any more to say. I said what I was talking with him, you know, a couple of words, and that is what he answered me; he didn't answer me back.

Q. He didn't what?

A. He didn't say anything back.

The Witness: I did not talk with Harry Herbert at the time. I did not attempt to buy poultry from any other market man in Williamsburg, just by that Bennie Kaplan, and in that Johnson Avenue. I didn't go any further. After this incident I have been buying my poultry from the Beadle Street Market, regularly. I used to pay three, and now since they start up back again, they raised me a cent a pound.

Mr. Perlman: He said now that they started again. Surely we are not bound by his conclusion on that. That is the part I object to and move to strike out.

The Court Overruled. Denied.

Mr. Perlman I except.

Q. When did the Beadle Street Market start charging you one cent more per pound?

A. They said clearly they are getting organized, and they want to have a cent more, and I——

Q. Who said that?

A. In Beadle Street Live Poultry.

Q. Who in Beadle Street?

A. The bosses there, I think Abe Rosenberg.

Q. Did Harry Herbert say anything about that?

A. No.

Q. Was he present when Abe Herbert said that?

A. I don't think so; no.

Q. Who did Abe Rosenberg say was getting organized?

A. Who did he say what?

Q. Yes. Who did he say was getting organized?

A. He told me it would cost me a cent more on the pound, and I didn't protest on it, because I know from before, I will have to pay.

[fol. 414] Mr. Perlman: I move to strike out what he thought; what he knew.

The Court: Overruled. I will take it.

Mr. Perlman: Exception.

The Court: I am not going to hold him down to expressing himself as you and I would.

Mr. Perlman: Surely this witness is volunteering a lot of thoughts and knowledge not based on evidence here. It is hard to be bound *it* it.

Q. What else did he say; tell us everything.

A. He did not say a thing, but he raised immediately a cent and that was all.

Q. Now you tell us, Mr. Scott, just what Abe Rosenberg said about charging one cent a pound more?

A. He said from today on, instant, to say, four or five weeks ago, from today on costs you four cents more. That means a cent more than you paid. And then there is another thing, there is the spring roosters.

Q. Yes.

A. To say right—they are roosters—already I never paid more than two or three cents above, and now I pay five cents above, and I have got to pay it.

Q. Did Abe Rosenberg say anything about that?

A. He didn't say anything, but they put it on the ticket and we have to pay. I am a good payer and I pay my bills promptly.

Q. Did he say anything about the market men being organized?

A. I think he did.

Q. You think he did?

A. Yes, sir.

Q. Just what did he say about that, that is what I am interested in.

The Court: So far as you can remember. Your best recollection of what he said.

A. I couldn't exactly say it, but more sure, he said we are getting organized and it costs you a cent more.

Q. And did he say the market men were getting organized?

A. I don't know exactly.

Q. Well, did he say who was getting organized?

A. I don't remember that point.

Q. He just said we are getting organized?

A. I don't remember exactly that point.

Q. Did Harry Herbert say anything?

A. No, with Harry Herbert I never talk about business, just hello and goodbye when I see him some morning, be-
[fol. 415] cause the inside man is that Abe Rosenberg and he sells.

Q. By inside man in the market, you mean the man that sells to the retail poultry dealers and butchers?

A. That is it, Abe Rosenberg.

Q. That is the only man you generally talked with in the markets?

A. That is it.

Mr. Perlman: No questions.

Mr. Kroppy: I move to strike out all his testimony as having no bearing on the allegations of conspiracy here, and no proof at all tending to show that any of these acts were committed in pursuance or furtherance of any conspiracy alleged in the amended petition, and especially on the ground that everything the witness testified to relates to intrastate commerce solely and has no reference at all to interstate commerce.

Mr. Perlman: May I join in that and add to that that I move to strike out that part of his testimony with respect to conversation had with Rosenberg, and may I ask your Honor to reserve decision on that to say to at the end of the case whether there is any connection with Rosenberg as a co-conspirator.

The Court: No, I will rule on it now. I will deny both motions.

Mr. Perlman: Exception.

Mr. Kroppy: Exception.

[fol. 416] Bert Bass, called as a witness in behalf of the Government, being duly sworn, testified as follows:

(The following testimony, given at the former trial in October, 1929, was read in evidence, pursuant to stipulation and subject to objection and exception as to competency and materiality:)

Direct examination:

The Witness: I am in the live poultry business about six years in Brooklyn. I attended the meeting of marketmen of my borough during the summer of 1927 over in Grable's Hall. Those who were present were marketmen from Brownsville, Dave Hirshon, Morris Gordon, Rivlin, Hellman, Kadin, Oster, Franzel, Sorkin. Of these meetings, I attended about four, beginning about May and ending in June, 1927. Speaking about their trade, they said they were not supposed to take away any butchers that did not belong to them. I think they did say about a cent a pound for all poultry we take in. They did not say what was going to be done with the cent a pound. I didn't hear anybody ask. I paid a cent a pound to Lax and Lipkin. They came around about four times, once a week. I paid them $25 a week.

At the various meetings we were just talking about the trade. What was said was that every one was to pay a cent a pound and that we were not to take each other's butchers. There were a few disputes as to who was to get certain customers, and they were straightened out by the president of the meeting, David Hirshon, and Morris Gordon. They were between people who attended these meetings. The last time that I attended one of these meetings was in the latter part of May or beginning of June, 1927. I had [fol. 417] a conversation with David Hirshon about that time. I had a couple of butchers who went away from me and I refused to pay for them any further. He said he would try and get them back for us, and wanted us to keep on paying, and I refused to pay until I got them back. By "Pay" I mean these payments of $25 a week, just for the trade.

We didn't get any poultry the next day. I tried to get poultry in West Washington Market from a few commission merchants, Charles Collins and Schwab; no others. I did not get any poultry that day in the market or at the terminals. I tried the following day to get poultry at the terminals in Jersey. I did not get any poultry there. I

do not remember the commission men from whom I tried to buy. I was unable to get poultry at the terminals or at the market for about six weeks. During this period I got poultry from Harrisonburg, Virginia, and Boston by railway express.

I had a conversation at West Washington market with Arthur Herbert about five weeks after we stopped making payments. He told us to take union men and he would give us the stuff, because we had a couple of young fellows working for us. At first I refused and then I said O. K., and received my poultry. I took on one union man. I recall someone in West Washington market telling me to go over to a meeting and settle with Hirshon. I don't know which one told me. I think Tootsie Herbert was there and four other people. I do not know which one of the Herberts. It is the first time I ever seen them, I don't know them. The occasion that I am talking about is one time some five men drove up with a Pierce Arrow. Dave [fol. 418] Hirshon was there. He told me he wants to go over to the meeting place and settle it for me. I didn't go. I drove home. They followed me a few blocks.

I tried a few times on other occasions to get poultry in West Washington market. I don't remember when I tried, but I tried a few times and did not get any.

Q. Did you have any conversations down in the market on those occasions?

A. I did.

Q. With whom?

A. With the commission merchants.

Q. What did they say to you?

Mr. Kaufman: I object to any conversation with commission merchants who are not defendants.

The Court: Overruled.

Mr. Kaufman: And with whom we are not charged with any conspiracy.

The Court: Objection overruled.

Mr. Kaufman: Exception.

The Witness: When I tried to get poultry from they they have not go- it; they also refused. I don't remember what else was said. They said they did not have any for us. Tootsie Herbert said to me I could not get any poultry

there, on one occasion when I met him. No one else said anything of the kind.

Q. Do you remember his trying to stop you from getting poultry when you came down there?

A. Someone did, yes.

Q. Do you remember who it was?

A. I do not.

Q. What did that someone do?

Mr. Kaufman: I object to that as incompetent. A conversation with a person not identified.

The Court: Objection overruled.

Mr. Kaufman: Exception.

The Witness: He told me I could get no poultry and he told my driver to move on. I saw him talking to the com-
[fol. 419] mission men that one occasion.

I remember one day getting six coops of poultry from Schwab, around July or August of 1927. I remember a conversation with Arthur Herbert on that day. He told me, why should I take stuff on the sneak, when I can take a union man and he will give me all the stuff I want. I told him that I would take on the union man. Then I got my poultry. The same people who had refused me that morning offered it to me. The ones who refused me that morning and who offered it to me that afternoon were Berman & Badeker and Charles Collins, Werner and Garlick & Dinerman. That is all I can remember.

About two days after we were out of the corporation, Herbert told me to go up to Hirshon and straighten things up. I remember on September 5th, 1927, calling up Mr. Rice and making a certain statement to him as to what had happened that day in West Washington Market. Tootsie Herbert told me to get a union man and he would give me the stuff. He did not mention the name of Hirshon on that occasion. I remember during the time that I was telephoning to Mr. Rice, around June, 1927, that the conversation was interrupted by someone down at West Washington Market. A few men walked in. I do not know who it was. I called up from some booth there and they walked in and I just hung up. Tootsie Herbert was not one of the men that walked in. I would not recognize them now. I recall on one occasion when a man walked in and looked at my charge book, but I do not know who it was. I would

not recognize him because that was the first time I seen him. I have not seen him since.

[fol. 420] Q. What did he say to you on that occasion?

A. He looked over our charge book and he seen one of the charges there without a name, just a number on it. He told us it did not belong to me.

Mr. Kaufman: I move to strike out the testimony of this witness with persons unknown and who are not identified, upon the ground it is not binding upon any defendant.

The Court: Motion denied.

Mr. Kaufman: Exception.

Cross-examination:

The Witness: The meetings that I have testified to were meetings of practically all the people who were engaged in the poultry business in the section known as the Brownsville district. These meetings occurred in the summer of 1927. It was practically a local meeting, that is it was confined to the Brownsville district. I met certain people there that I have just identified and named; of course, I met them over in that district. At this particular time something to improve the condition of the business was discussed. Business had been bad, and they were trying to find something to improve that condition.

At one of the meetings it was agreed we were to pay $25 a week to get certain customers. As long as I got the customers I paid $25 a week, and when the customers left us, I refused to pay the $25 a week. I paid them for some five weeks, during the month of July and part of the month of August, 1927. When I ceased paying it, I had some trouble in getting poultry. I was not employing at that time a union man. I was told that if I put a union man on, I would get poultry. I put a union man in and I did get poultry. I did a strictly retail business. I handled at that time about forty coops a week and that ran about 200 pounds to the coop.

[fol. 421] By Mr. Kaufman:

During those six weeks I was getting in all the poultry I required from Harrisonburg, Virginia. The first time that I was told about putting union men in our place was the first

couple of weeks in August, 1927, by Tootsie Herbert out in West Washington Market. At first I refused to put on union men; then I did put on a union man; he was sent in to me. He is still working for me; his work is satisfactory. He has been employed by me since August of 1927. Since that time, I have not been making the payments that I referred to before, and I have not been interfered with or troubled in any way at all.

Redirect examination:

As to this poultry I got from other sources, I just sent a telegram and they sent it the following day. It cost me more to do business that way; lot of work sending the telegrams and taking in the baskets.

Mr. Kroppy: I make the same motion to strike out the testimony, on the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

The witness testified on this trial as follows:

Cross-examinatoin.

By Mr. Perlman:

The Witness: I am a poultry dealer. I employ shochtim who are members of the Shochtim union, and loaders, who are members of Local 167. I did not have any trouble with the unions when I employed union men. I have not had any trouble since the latter part of 1928. I am able to buy poultry and sell it at any price that I may fix. I have never had [fol. 422] any trouble in buying poultry in the West Washington Market or at any of the railroad terminals since 1928.

[fol. 423] Mack Harnett, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I was in the live poultry business in 1927, 1928 and 1929, with my father, Jacob Harnett, in Brownsville, in the same area as Hirshon's market.

I attended a meeting of Brownsville market men in July, 1927. Practically all the market men of Brownsville area were present, Morris Gordon, David Hirshon, Jacob Mintz, Louis Sorkin. The Prospect Live Poultry was represented, I don't remember by whom. Ike Kaplan; there was Kaidin, I don't know his first name; Jacob Koslow; there was the Junius Street Market represented,—I don't know their names, just about one or two of all. Howard Live Poultry Company was represented by Chazizanon, something like that. I don't think David Hasenfratz was there. Harry Gordon was there. The sons of the Schechter Brothers were there, I don't know their first names. Resnick was there; I don't know his first name. I think Franzel was there, and a man named Perlman. Harry Rubin was there. Morris Gordon called the meeting to order. At that time before the meeting two men drove around in an automobile and told us there was going to be a meeting held that night at Grabel's Hall. If I remember correctly, I think it was Carl Firestone and a fellow by the name of Murray who drove around. I just know him by the name of Murray. Carl Firestone told me there was a meeting to be held that night at Grabel's Hall, and I should be there. He did not say what sort of meeting. Neither David Hirshon nor Max Gordon invited me to attend the meeting, nor mentioned it be-
[fol. 424] fore the meeting.

Morris Gordon told us the meeting was called for the purpose of organizing the business, and that each man would have to bring a list of his customers to whom he sold in the last week of June, 1927, and that another meeting would be held a week from that night. The purpose was that each market man should have their customers and that each market would only be allowed to sell to their own customers, and in order to ascertain whatever customers belonged to certain markets, each member bring their lists and the market who sold the most poultry to that customer as of the last week of June, 1937, that customer would be compelled to buy there. That was agreed to by all of the market men present. Hirshon was one of the leaders there at the meeting. He acted as chairman part of the time. Between Morris Gordon and himself, they ran the meeting. Hirshon told us to be at the meeting next week and that everyone who will not be there, he will bring them to the meeting. They adjourned when they were told to bring their lists

at the next meeting. Nothing was said at the first meeting about customers. It was said at the meeting that if any of the markets at that time claimed the same customer, the market that sold the customer more poultry during that last week of June, 1927, the customer will be allocated to that market. They did not say how they were going to enforce this arrangement at the first meeting.

The second meeting was held a week later. The same market men were there. At that meeting we were told that we would have to pay one cent on a pound for every pound of poultry that we sold. I think it was just David Hirshon that said that. He said they would have to hire men to run the business and also to take care of the Attorney General's [fol. 425] office. He said payments to the State Attorney General's office would have to be taken care of, he did not mention any names. He did not say that Benjamin Simon had said anything about that.

The one cent a pound collections also would be used to hire men. What kind of men they were going to hire was not stated, they just said men. They did not use the term "gangsters." Hirshon said the function of these men was to see the business was run correctly, and that the cutsomers are buying their poultry where they were supposed to buy. They were to see to it that everything was run right. That is just the words they used. The checking up on the markets was done at the meeting that night. And, if I remember correctly, also at that meeting Hirshon said that if any customers will leave their places, these men will bring them back. Just those words. I don't remember anything else Hirshon said or what Morris Gordon said at this meeting. All the marketmen agreed to these practices outlined. Sam Resnick was the secretary of the meeting and he was in charge of the meeting at the time. No other collector was appointed at the meeting.

Later Morris Gordon and Sam Lipkin did the collecting. Koslow did the collecting. I don't know if they paid for that. Morris Gordon made collections from me. The first time they collected, Morris Gordon and Sam Lipkin came over to my place, they checked up on the books and ascertained the amount of poultry we sold, and at that time I gave them a check for the amount. I think it was fifty and some odd dollars. On the basis of one cent a pound, we made about 50 payments, but half of them were in checks, and the [fol. 426] other half in cash. Samuel Lipkin asked for cash.

I offered him a check. He said he wanted to make sure he don't get into any trouble, and he wanted cash. If I remember correctly, I think they were made payable to cash and one check was made payable to Sam Lipkin. He wanted it made payable to cash.

Exhibit 39 is a check written by Samuel Lipkin and signed by my mother. The date of the check is August 27, 1927, and is drawn to cash for the sum of $40. There is only one endorsement, Market Lunch, near West Washington Market. The signature of Joseph R. Rosalsky is also on the back of the check. I appeared on an investigation in the same case before Judge Rosalsky, and he at the time, when this check was an exhibit in that case, put his signature on the back of it. Through the State Attorney General's office, there was a hearing before Judge Rosalsky. That was the time when we had trouble with the association. That was either the latter part of 1927 or the early part of 1928. That check was handed Lipkin when he came around for a collection. He wanted at that time a cent on a pound and we wanted to make a flat rate with him, just give him $40 because we didn't want to pay on a retail business, and then he insisted we pay him all, and we gave him $40 and called it square.

The check Exhibit 39 for identification was paid. I know from my regular examination of the bank statements.

Exhibit 44 is my own personal check I paid to Sam Lipkin at the fourth meeting the market men held at Grabel's Hall. It was made payable to cash. The date is August 1, 1927. Sam Lipkin asked me for the payment of the previous week, and in return I gave him this check. Everything on the face of this check, excepting my signature [fol. 427] is in the handwriting of Samuel Lipkin. The poultry we sold prior to this check we estimated at 4,400 pounds wholesale. The check is for $44. (Government Exhibit 44 received in evidence.)

Exhibit 45 is my own personal check payable to Samuel Lipkin for $35, dated August 9, 1927. This check was made out by Samuel Lipkin, and I signed it, at a meeting a week following, on the night of August 9, 1927. He asked me for the payment for that week, and I paid it to him. We sold the week prior to the payment of that check about 3,500 pounds, wholesale; I didn't pay on retail.

I told him I only sold about 3,500 pounds, and he made out the check. As a matter of fact, I sold about 6,000 pounds wholesale. Samuel Lipkin examined our books to ascertain that. After examining our books, he asked for more money, but he did not get it.

Mr. Perlman: I object to it as incompetent and not binding on the defendants.

The Court: Overruled.

Mr. Perlman: Exception.

(Government Exhibit 45 received in evidence.)

The Witness: Exhibit 40 is a check for $40 given at my place of business September 10, 1927. It was made out by Sam Lipkin and signed by my mother. We had sold the week prior to the payment of that check about 4,000 pounds wholesale.

Mr. Perlman: I object to it as incompetent and not binding on the defendants.

Mr. Kroppy: It does not tend to prove a conspiracy or that it was given in pursuance of any conspiracy.

The Court: Overruled.

Mr. Perlman: Exception.

Mr. Kroppy: Exception.

[fol. 428] The Witness: These checks were received back from the bank as cancelled vouchers and charged by the bank into the account of the drawer.

(Exhibit 40 for the Government received in evidence.)

Exhibit 41 is a check for $45, made out by Samuel Lipkin, signed by my mother, and was handed to him in my presence. It is dated September 3, 1927, and the poultry we sold in the week prior was about 4,500 pounds. That check was received back from our bank as a canceled voucher.

Mr. Rice: Exhibit 41 offered in evidence.

Mr. Kroppy: Same objection.

The Court: Same ruling.

Mr. Kroppy: Exception.

(Government Exhibit 41 received in evidence.)

Exhibit 41 is a check that was made out by Sam Lipkin and signed by my mother on August 22, 1927. The

amount was $42, for the previous week of about 4,200 pounds of poultry sold wholesale. It was handed to Sam Lipkin in my presence. That check was received back from our bank as a cancelled voucher.

Mr. Rice: Exhibit 42 offered in evidence.
Mr. Kroppy: Same objection.
The Court: Same ruling.
Mr. Kroppy: Exception.

(Government Exhibit 42 received in evidence.)

Exhibit 43 is a check dated August 15, 1927, made out by myself for $43.59, and handed to Morris Gordon. The check is signed by my mother. On this occasion Morris Gordon was there with Sam Lipkin, and I made out the check myself and handed it to Morris Gordon. Lipkin checked up on the books at that time. The amount of poultry sold, wholesale, was 4,359 pounds, and the check is for [fol. 429] $43.59, exactly one cent per pound. That check was received back from our bank as a cancelled voucher. It had been endorsed by Louis Mirotznick, a marketman in Brownsville.

Mr. Rice: Exhibit 43 offered in evidence.
Mr. Kroppy: Same objection.
The Court: Same ruling.
Mr. Kroppy: Exception.

(Government Exhibit 43 received in evidence.)

The Witness: At the meetings of the Brownsville marketmen, the lists of the various markets were read, and they were ordered by Morris Gordon, who acted as chairman at the time that any market man who disputes a customer let him say so, and later on that evening the dispute will be taken up. Whenever a couple of market men claimed a certain customer, they would say so. After all these lists were read, then Hirshon, Jacob Mintz and a gentleman known as Pop Weinstein were appointed the arbitration committee to settle the dispute, and whatever they said in reference to the customer went. They were given that power to decide where that customer belonged. I had a dispute over three customers, and the committee allotted them to me, and they purchased poultry in my place. They asked me how much poultry these customers bought the

last week in June, 1927. The committee also asked the same question of the other market men who disputed the customer, and being that they bought more poultry in my place during that week, they were allotted to me.

Something was said at either the first meeting or the second meeting about maintaining prices. At the first meeting we were told that at that time we were charging about three cents over the market quotation on a fowl, and [fol. 430] five cents on chickens over the market quotation. At this first meeting, we were told to charge six cents on fowl and eight cents on chicken. David Hirshon told us that. All of the market men agreed that they would charge a margin of six cents on fowl and eight cents on broilers. They later increased that to eight cents on fowl and ten cents on chicken.

Dave Hirshon first told us about the one cent a pound at the meeting at Grabel's Hall. He said one cent on every pound of poultry would have to be paid to us, and that had to go towards the expenses of running the organization, and also pay the State Attorney General's office. He said they have to hire men to run the organization and also to pay the State Attorney General's office.

He told the marketmen not to sell poultry to strange customers, and also at the meeting while they made collections, there were some market men who refused to pay and he ordered them from the meeting. They did leave. They were Schechter, and Harry Dworkin. Neither Hirshon nor any one else said anything further as to any further payments to be made, and I do not know whether any further payments were made out of those collections. Later on some market men were paid. As business progressed and various disputes arose, then Dave Hirshon made settlements with various market men, and they paid them.

On one occasion Dave Hirshon accused me of selling poultry to a strange customer. I told him I did not. This happened in the latter part of 1927, just before the Rosh Hoshana holidays. At that time Arthur Herbert and Charles Herbert on the morning of the sale before the Rosh Hoshana holidays walked in my place about five minutes [fol. 431] after five and stated that we violated the union rules by starting men to work at 4.30—it was not true—and took the men out of the place. I think it was Arthur who said that we violated the union rules. There was his

brother Charlie, my father, and the man who worked there, Irving Gotkin, the shochet and myself.

Q. Had you violated the union rules?
A. I had not.
Q. In any respect whatever?
A. We did not.

Mr. Kroppy: I move to strike out the answer. There is no evidence as to what the union rules were, so he cannot tell whether they were violated or not.

The Court: Overruled.

Mr. Kroppy: Exception.

The Witness: The day before the union delegates took the men out of my place, I was accused by Hirshon for selling poultry to strange customers. After that I could not load poultry, and for a while I had to go out of town to get poultry. When I went to the West Washington Market, or went to the railroad terminal, they would not sell me poultry. From almost every one I am able to buy now. I had never been refused poultry before that time. I bought for several years, and my father bought poultry there for about twenty-five years prior to that. Our credit had never been attacked by the commission men. Our bills had always been paid promptly. One commission man, Jake Bloom, said "I would like to sell you some poultry, but you know I cannot get into trouble with the men. They would take my own men off the place if I sold you poultry".

Q. Did he refer to any one?
A. No, he did not mention any names. He just used the word "they".

Mr. Kroppy: In view of the witness' testimony that he used the word "they", and did not explain who "they" meant, I move the testimony be stricken out.

[fol. 432] The Court: Denied.

Mr. Kroppy: Exception.

The Witness: At that time, also, if I remember correctly, Jake Bloom sold me some poultry. He left it on his stand until midnight, and I came with some men at midnight, loaded the truck myself, and took it. I picked some men in the neighborhood. They were not members of Local 167. My father and I dealt with James Norris, Inc., for years.

Doc Norris is the main man. He told me the same thing, "I would like to sell you poultry. What can I do? I am not allowed to do so, and I cannot do it." At one time, he said "Harnett, why don't you straighten out? Why don't you get that over with? Why do you have this trouble?" I said "What did I do, Doc? I can't help it. They have been picking on me." I also tried to buy poultry from Arthur, S. Werner, Fleck, Hillman, George Brown, at that time, Charles Werner, and various other commissioners there. I just cannot think of all the other names. There are quite a number of commission men in West Washington Market, between 40 and 50. I attempted to purchase poultry from about 20. Then I went to Baltimore, to Philadelphia. At first I took my own truck. I also attempted to make purchases at the railroad terminals where poultry comes into the New York Central, at 60th Street, Manhattan, and the Delaware, the Erie, the Jersey Central, in New Jersey, from the same commission merchants. They sell poultry from the railroad terminals as well as West Washington Market. I was told at the railroad terminals that they are sorry they cannot sell it to me. I had regularly purchased poultry at the terminals before that time. No objection was made to our credit at that time. We did not [fol. 433] owe them any bills. We did not try any other place in New York. There were a couple of market merchant men who purchased poultry for me and turned it over to me secretly. At that time I think it was Dave Hasenfratz and the Junius Live Poultry Company. The market men said they refused to sell me because I sell poultry to strange customers. Several commission merchants told me they have been ordered by the union not to sell me any poultry, and if they did sell me poultry, they would have to close up their own places; they would take the men from their places, the same as they would from mine or anyone else. On one occasion I had already purchased this poultry from Doc Norris, and when I came over with my truck to load poultry, the workers refused to load the truck and Doc told me "Chief, I didn't know you had this trouble with the men. I am sorry. I will have to recall the sale.

Just prior to the time that I was unable to purchase poultry. I had sold to people that were not on my list. I had a customer who suddenly stopped buying in my market. A few days later I found out he was purchasing poultry from Morris Gordon and his two brothers. When they did

that I turned around and sold poultry to some customers who were buying poultry from the Gordon brothers. I went to their place of business and sold them some poultry. After I sold them poultry, the men were taken out of the place, and I could not load any poultry. In West Washington Market, I had a conservation with both Hirshon and Morris Gordon at the time. Hirshon asked me what is this trouble all about? I said 5105 Church Avenue belongs to me, and Gordon Brothers had no right to take that customer. I only did the same thing that he did. Then he called over Sam Sahn. Gordon Brothers belonged to Williamsburg, and Sam Sahn was supposed to be the leader of [fol. 434] that district. Sahn said "Listen, Harnett, let 5105 Church belong to Gordon Brothers, and I will pay you $50 a week". Gordon's market is not in Williamsburg, but they are in the district with Sammie Sahn. I refused it. I said the customer belongs to me. Although they may be brothers of Morris Gordon, they are not going to put anything over. I said "He belongs to me and I want the customers". Dave Hirshon was there, but had nothing to say. I took it up with Dave Hirshon, and he seemed to be pretty fair about the thing. He even remarked "If the customer belonged to you, I don't blame you for wanting him". I remember Sam Sahn threatened me at the time, "Unless you settle about it, it will cause you a lot of trouble". He said there was a place in the Bronx, that had a market full of poultry, and just before the sale they came up and took the shochtim out. "Now, you don't want the same thing to happen to you", he said. David Hirshon was there when he said that to me, but did not say anything. This happened on Hawks' stand.

I know Irving Gotkin; he is my second cousin. He was employed at my place at that time to handle poultry. He was a member of Local 167. He always sold poultry to any customer that I designated before the association. After the collections in Brownsville commenced to be made, he refused to sell poultry to strange customers. This was in the latter part of 1927, just before Rosh Hoshana, about September. A strange customer was in the place, and I sold him some broken fowl I had there, and I told Irving to hand out the fowl out of the coop. He says "I won't do it", and at the same time the rabbi says, he would not slaughter the poultry. When I insisted upon Irving hand-

ing out the poultry, he took his hat and coat and says "I am not going to jeopardize my job", and he walked out. [fol. 435] He did not say anything further. He did not see the list of the customers that had been assigned to me, but he knew all the customers who belonged to our place. The shochet refused to kill the poultry. He said the customer did not belong there and *was* he was not going to get in any trouble. He said he was told not to kill any poultry for strange customers. He did not say who had told him that. He was a member of the Shochtim Union. Charles and Arthur Herbert visited my market about that time. They walked into the place about a few minutes after five, just after the killing started, and took the shochet and the man out of the place. He walked in and said I violated the union rules by starting to work at four-thirty.

On one occasion Arthur Herbert, at the New York Central Terminal, told me not to sell any poultry to strange customers. No one else was there at the time. That is all he said.

On two occasions, when I was buying from out of New York, I saw an automobile trailing me. I drove through the streets, made various turns, and this car made the same turns I did. I spoke to a patrolman. He stopped the car that was trailing me and asked the driver for the license, and the driver was Carl Fireston's brother. He was the only one in the car.

On another occasion a patrolman stopped a car, and in the car were Rosenstein and David Kaufman. I understand Kaufman is a delegate of 167. Those are the only two occasions I know of when any one followed me.

I saw Jacob Koslow and Carl Firestone watching my market, and on one occasion I was watched there by Harry Herbert. I think it was one of the Herbert boys. I do not [fol. 436] know if he is the market man or not. This was about the early part of 1928, about 7.30 in the morning when the truck was loaded with the orders, Harry Herbert looked around the truck and looked at all the tags showing where all the orders were going to. He happened to see the tag of a customer named Rubin, and he told me that I had no right to sell poultry to this man. Harry Herbert examined the tags before Arthur Herbert and Charles Herbert came to my place of business.

Every day or so Jake Koslow or Carl Firestone would walk into my place of business just when the butchers would be there killing their poultry, to see who was there buying poultry. This happened over a period of a few months, during the length of this association. They had not been in the habit previous to that time of coming to my place of business. I did not have any business transactions with them. They had no conversations with me in regard to why they were at my place of business. They came together, and drove around in the same car. They stayed just a few minutes, take a look and walk out. They had no conversation with me, except to say good morning or so; that is about all. They did not have anything to say to other people in the place of business.

On this occasion, just prior to the Passover, Arthur Herbert was not there, it was Charles Herbert and Carl Firestone came in the place. Charles Herbert did not say anything. He walked into the place and told the men to put on their hats and coats. Nothing was said about the hour of the day, or about the time when my labor men could start work. This was at about two minutes after five in the morning. I told him to take the men and get [fol. 437] out of the place. He called me a nasty name, and I called him one back, and that was when he took a swing at me with his fists. He just missed me. Then he picked up a trough and attacked my father. It is made out of tin, about three feet or so long, and weighing about seven or eight pounds. He lifted it up the same as you hold a baseball bat and hit my father, who is about 65 years old, over the arm. I attacked him myself when he did that. Nothing else happened. Carl Firestone at the time dragged him out of the place, and the men left in the meantime. Carl Firestone had come in with him.

I don't know whom Firestone worked for, but on one occasion I saw Jake Koslow hand him $75. Koslow is one of the market man in Brownsville. He was one of the collectors. At that time Carl Firestone was not employed in the market of Jacob Koslow. I saw Jacob Koslow in the presence of Carl Firestone other times, when he and Carl Firestone used to come over to my place. On one occasion when I was talking with Sam Rubin on the telephone, I was on one extension, and after I got through speaking to the butcher, Rubin, I went into the market.

Charles Herbert was in the market, and he told me he was on the other extension and he overheard the conversation I had with this butcher. That is all he told me. He told me not to sell any poultry to strange butchers.

A few days later, I went to West Washington Market to purchase some poultry. The commission men refused to sell it to me.

Mr. Perlman: I move to strike it out unless he states where he went and who refused him.

The Court: Denied.

[fol. 438] Mr. Perlman: Exception.

The Witness: I attempted to purchase poultry from about 15 or 20 commission men, on this occasion. They said they were sorry, they could not sell it to me. They told me "You have got trouble over there, and we have got orders not to sell it and we cannot sell it". They did not say who gave them the orders or what the trouble was that I got into.

Two or three days after Charles Herbert told me that he had listened in on a telephone conversation with Rubin, I saw Sidney Rosenstein in West Washington Market, stooping under the tires of my truck. He stuck an ice pick or something like that in the tire of my truck. I just caught him as he was pulling the ice pick out. When I came up to my machine, two tires on the left-hand side were flat. I just happened to look at the truck and I saw a figure stooping there, and I ran around the truck, near the left rear wheel. That was one of the tires that I found flat. As soon as he saw me he ran away. He did not say anything to me about that later. I think he worked in the Borough Park section. He didn't work in any market. I don't know what he did.

I attended a meeting on election day in November, 1927. Carl Firestone came around and told me there was a meeting at Grabel's. Morris Gordon was chairman of the meeting. David Hirshon and all of the market men that I stated were at the prior meetings at Grabel's Hall were there except Dave Hasenfratz. Dave Hirshon said we have got to collect the money, the penny on a pound. He told it to everybody at the meeting. He did not say anything else, that I can recall. I think on that occasion one market man, Schechter, refused to pay, and he was ordered from the meet-

[fol. 439] ing; and at that meeting, if I remember correctly, I was accused of selling poultry to a strange customer, and I was ordered out by Hirshon. I think I did go out and that is all. I don't recall the customer on that occasion. I was there with my father, and after I was ordered out, Morris Gordon intervened and offered to make a settlement of all this trouble we have had with strange customers, and the fact that on occasions we could not purchase poultry and we secured poultry from out of town and sold openly. He said "Why not get together and straighten this thing out". Hirshon, my father and myself got together and we spoke it over; and at that time Hirshon agreed to pay me $200 a week not to do any wholesale business. He did not say where that $200 a week was coming from. It came from the moneys collected from the cent a pound, because on one occasion when I was over to his market and I was supposed to collect $200, he gave me a check of Abe Franzel's for $200, and he happened to remember "I just got this check from Franzel in payment. Here you take it". Abe Franzel is a market man in Brownsville. The final settlement was that I should receive $200 a week just to do a retail business, and I promised them I would not do any wholesale business. Hirshon asked me to make that promise. It was all done between Hirshon and myself.

I was paid $200 a week for about three months, and I stopped doing a wholesale business for the same length of time. I stopped making the one cent a pound payments at that time. When the settlement was made for $200 a week, Hirshon said I was not to make any payment, and [fol. 440] was not to do any wholesale business. That was the agreement between Hirshon and myself. After that I was able to purchase any poultry in West Washington Market, and I did the very same day.

Prior to that I had not purchased poultry in West Washington Market. I bought it out of town, Baltimore, West Virginia, Bridgeport, Philadelphia. I rode the truck on one occasion to Philadelphia. When I was on the way back from Philadelphia, I noticed I was being trailed. I did not see who was in the car, but the car was one of these flashy Packards, a car that you can easily tell, and I have seen on previous occasions Arthur Herbert drive that car. I am pretty positive it was that car.

Q. Did you see the license?
A. No, I could not see it.

Mr. Kroppy: I move to strike that testimony out.

The Court: Overruled. We will take it for what it is worth.

Mr. Kroppy: Exception.

The Witness: I heard Morris Gordon say something about not loading poultry for people at any time at a meeting. He had some trouble with, I think, the Junius Street Market, and he told his fellow unless he paid at that time, he would not be able to load any poultry. When they were making the collections, they asked this man for his payment. He refused to make the payment, and Morris Gordon told him unless he made the payment, he is not going to load any poultry. He did not say where. I think a market man from Junius Street Market paid. I don't remember how much he paid. I have heard Sam Lipkin say that they [fol. 441] wanted the payments made in cash, but how they actually paid I do not know. When Sam Lipkin was over at my place, and at a meeting, he asked for cash. He said they do not want to have any trouble.

The first two weeks, payments were made at the meetings at Grabel's Hall. On those occasions, they were mostly checks, made out to cash. I should judge there must have been about six or seven thousand dollars. I know that, because I happened to sit next to Sam Lipkin. He had a list there. As he got these checks, he marked on the slip next to the name of the market, and just by glimpsing at it—I added the hundreds and fifties. Those were only the payments by the market men in Brownsville. This was the second meeting. At the first meeting there were no collections. I do not know whether the payments continued to be about the same amount. I paid about $50 every week.

I saw checks there for $300. On the first occasion, I saw Jacob Mintz hand over a check for $300. There were a couple of them handed checks in figures of $300. I do not remember the amount paid by Hirshon; I know it was a couple of hundred dollars, and Morris Gordon, the Prospect Live Poultry Company, the Howard Live Poultry paid a check. I know the Howard Live Poultry Company paid over $300. One of the partners is Chasanov. Then there were amounts ranging, I think—Our payment was about the

smallest one. No payments were made out of that fund to market men that I know of. They paid me $200 a week. I know they paid other market men in Brownsville. I know they paid the Junius Live Poultry, because I was on one occasion at the Chamber of Commerce, and I was paid, and I saw them there. Hirshon made the payments at the Cham-
[fol. 442] ber of Commerce, but I seen Ben Simon up there on numerous occasions. He was present, but did not say anything. I think he saw the payments made. The payments to me were made on Fridays; practically all of them were made at the Chamber of Commerce. I saw the smaller market men of Brownsville pay money at the Chamber of Commerce, but none from any place else.

I never saw Louis Spatz at the Chamber of Commerce. I saw the delegates of Local 167 up there sometimes, but they never interfered with me. I think I saw Arthur Herbert and Charlie Herbert up there, but they never had anything to do with the payments. I mean I did not see them have anything to do with the payments. I did not see anybody else at the Chamber of Commerce Office. I do not know of any business that these delegates had at the Chamber of Commerce office.

Sam Lipkin told me that he had a record; he kept records of the moneys they collected and paid. He said he had a list of all the markets and how much he collected. I saw David Hirshon make entries in books in the Chamber of Commerce. On one occasion when I was paid, after he paid me, he took a small book out of his pocket, and he checked off the payment.

On the occasion that I saw $75 pass from Jacob Koslow to Carl Firestone, Carl owed me $20 and he says "Wait a minute. I have got to be paid right away. Wait a minute, and I will give you that $20 I owe you". I never saw anybody else make a payment to Carl Firestone.

I had a conversation with Joe Weiner on one occasion, at the time when I couldn't load poultry in New York. I think he and Arthur Herbert drove over to my place and
[fol. 443] asked me to take union men. I told them at the time if I needed them I would take them. I did not have union men in my place of business at that time. I had had no union men prior to that time for about two weeks. I had not discharged my union men and they had not left me. They were taken out of my place. Joe Weiner told me on

this occasion "Why don't you take four union men". I had had prior to this time, one union laborer and one shochet. I only need what I had before, one member of Local 167 and one member of the shochet union. I had been told prior to that time to take more than one union man and one shochet. On this occasion I spoke to Ben Simon at the Chamber of Commerce on Saturday morning, and I said "Mr. Simon, what is the idea? Why can't I load poultry in New York?" He says, "Why don't you go and take four men?" I says, "Take four men?" "Listen, Mr. Simon, don't tell me any story about taking four men. You know what this is all about. This is not a case of taking four men". And I said "You know the kind of men they send, if you take four men". He says, "You go and see Harry Schomer. See what he can do". I saw Harry Schomer. He said "Go and see Arthur Herbert". I did not go to him. During the time that I had only one union man, that is, one member of Local 167 and one shochet, Joe Weiner never asked me to take more than that. On the occasion when Joe Weiner came to my place of business with Arthur Herbert and I had a discussion with him about taking union men, he told me to take four men, and I told him I didn't need them. He did not say why, he just came in and said take four Local 167 members and two shochtim. I told him I did not need the four men. He went away, didn't say anything; that is all that happened. I have given the whole of the conversa-
[fol. 444] tion so far as Weiner and I took part in it.

On a Sunday morning in my place, during the summer of 1928, Carl Firestone told me "Watch out, you are liable to get the works." He advised me to stay away from the business for a while. On one occasion when I was over to his place of business with my mother, I spoke to Hirshon with reference to loading poultry. He says "You will take $150 a week or you will not load a pound of poultry." He says "You will take $150 a week or we will put you out of business." He did not say anything further. He walked out. This was the early part of 1928. He says I wouldn't be able to load a pound of poultry at New York unless I took the $150 a week. He said in Yiddish "As quick as you can find a place where to load poultry, that is how quick we will find a place where to stop it."

On one occasion, when I started to leave New York for Bridgeport, I saw Sidney Rosenstein and David Kaufman

trailing my truck. I went on out of the way trail to find out if they were trailing my truck. I looked out and saw they were following me and then when I was ready to go to Bridgeport I drove out a few blocks. They followed me and then I stopped on a corner where a patrolman happened to be standing and I told the patrolman I was being followed, and the patrolman held them off while I left with the machine. They did not say anything to me on that occasion. This was not in Bridgeport; this was near my place of business, when I was ready to leave for Bridgeport. They followed me a few blocks.

[fol. 445] Cross-examination.

By Mr. Perlman:

The Witness: I am married, but do not live with my wife. I have been separated from her about three years. I live in Baltimore. My wife lives in Brooklyn. Our one child is with my wife. I am working for the Lexington Surety & Indemnity Company during the last year. I lived in Baltimore last year, but this year I went to live in Baltimore about a month ago. Before that I was in the civil jail six months for contempt of court in not paying alimony. My mother is in the live poultry business today, the same as she was in 1927 and 1928. This market business in the years of 1927 and 1928 was my father's and my own. My mother may have looked out after the business, but she did not own it. I did not make an investment in that business myself. In 1927 I was 27 years old. The business has been there now for about 27 years. When I was old enough, my father took me into the business, and my mother continued to help. I signed check stubs in 1927, before I had any dealings with Hirshon. My mother signed all checks for this market business from about the middle of 1927 until about the middle of 1928. The business is owned by a corporation. I still own 50 per cent. of the stock and my father owns 50 per cent, but I am not in the business. I am not living with my parents now. I stopped doing business with my parents after this trouble in the early part of 1928. My father has continued that business until now, but I never went back to it. I know my parents are now employing one union shochet and one union loader. The last time that I ever talked with any of the Herberts was about the middle of 1928. The last

[fol. 446] time I ever spoke to Joe Weiner was the early part of 1928. The last time I ever talked to any member of the Shochtim Union or to any member of the Local 167 was in 1928. I have not had any trouble nor do I know of any that my father had with any member of Local 167 or the Schochtim Union or with Herbert or Weiner or Schomer since about the middle of 1928. My father's business has been perfectly peaceful since that time, and he has been able to buy and sell poultry since that time without interference at all.

I talked with a butcher named Rubin on the telephone. That telephone was in my home, and the extension was in the market. The home was, I should judge, about 150 feet from the market. Rubin called me and I talked with him from my home. Later Charlie Herbert told me he heard the conversation over the phone in the market and he told me not to sell any poultry to strange butchers. I am sure about that.

I testified about that in the criminal trial. I think I said that on the criminal trial.

Q. Do you recall being asked these questions and making these answers:

"Q. Do you remember a conversation with a butcher who was not supposed to be a customer of yours about which you talked to Mr. Charles Herbert?

"A. I do."

Do you remember being asked that question and making that reply?

A. It is in there, I suppose I made it.

Q. Well, do you remember it?

A. I think I did, yes.

Q. Do you remember this:

"Q. Will you give your conversation with Mr. Charles Herbert first?

"A. I don't recall what that conversation was about, but I do remember that some butcher called me on the phone and I happened to be in the house, and we have an extension in the house and in the market, the same phone, and Mr. Herbert was in the market and I was in the house and answered [fol. 447] the phone in the house and he picked up the receiver on the other end.

"Q. How do you know that it was Mr. Charles Herbert in the market who picked up the receiver on the other end?

"A. Because when I went down to the market he told me about it."

Do you remember that?

A. I think I did.

Q. Do you recall testifying that way?

A. I think I did.

"Q. When Mr. Charles Herbert spoke to you and told you that he had heard that conversation, did he say anything else?

"A. No."

Do you recall making that reply?

A. If it is in there, I made it.

The Witness: I am not adding to it. I said it today as I said it then. If I did not say at the criminal trial that Charles Herbert told me not to sell to a strange customer, I left it out.

I recall that I testified on direct examination that I saw Harry Herbert one day looking at some tags. Whether he said anything to me at that time, I don't remember. He may have. I think he did say something.

Q. I will read to you from the testimony at the criminal trial about that:

"Q. Will you describe your experience with Mr. Harry Herbert to the jury?

"A. On one occasion he was over to my place and he looked at some tags on the bags that were going out to the butchers.

"Q. Did you have any business with Harry Herbert on that occasion?

"A. No, I did not.

"Q. Did he say anything to you?

"A. No."

A. If it is in there I made those answers.

I say the same thing now. I don't say he said something to me, I say I don't remember if he said anything or not.

By Mr. Perlman:

I remember testifying at this trial that one of the Herberts came to my place of business, and asked me what I

meant by having my men work at half past four in the morning, and that he got the union men out. I recall making this answer to a question put to me concerning this incident at the criminal trial: "I told him to take the men, the union men, the men that he was delegate for and get out of the [fol. 448] place." That was true. It was the occasion when he took a pass at me and I countered with a pass at him, as I testified. He didn't loke the way I answered him, and so we got into a fight. I struck him and he struck me and he struck my father. That is what I told Herbert "Take the union men out of the place," and he took them out. He kept them out as long as I wanted them out. He kept them out for that two weeks period that I described. And Joe Weiner came along and said "Why don't you take union men," and I said "I don't need any union men, when I need them I will send for them."

About the newly painted automobile that I said belonged to Arthur Herbert, I think I told that story at the criminal trial. The car was a Packard. I don't know what year it was. It is an open passenger car. Well, I wouldn't say, it was a seven passenger car, it may have been a five. I suppose it is a stock model. I have seen many Packards. You don't see many of that color. I see these Packard cars going along the streets, once in a while. I saw them in 1927 and in 1928. I did not see the license on the plate and I don't know the license number of any car that was owned by Herbert. Even if I saw the number, I wouldn't recognize the car as being that belonging to Herbert. It is hard to explain that color. It was one of those flashy cars. It was a light colored car. You might call it light brown or light grey or something. It is hard to explain the color of that car. I haven't seen many light brown Packard cars. This new Packard car at the time I saw it, was trailing me in New York City. I just got out of the Holland Tunnel and drove town towards Canal Street, coming from New Jersey to New York. I first saw the car on Atlantic Ave-[fol. 449] nue in Brooklyn. I had gone from New Jersey through the Holland Tube over Manhattan Bridge to Brooklyn. That takes some time. Finally, I came down to Atlantic Avenue, Brooklyn. I observed this car. I think there were four passengers in it but I can't remember who they were. I couldn't recognize them. I knew Herbert and I could recognize his face. I would not say at this time that one of the four men in that car was one of the Herberts.

This automobile at the time I first saw it was, I should judge, about 75 feet back of me. It was almost midnight, and it was dark. There was very little traffic at that time. The car went all the way from Atlantic Avenue to my place of business, maybe three or four miles. I wa-n't driving the car. I was sitting near the owner of the car. It was a car belonging to the Levitt Trucking Co. It was pretty dark that night. I didn't recognize the men in the car. They kept back of me approximately 75 feet. It may have been at times 50 feet behind me and I couldn't see who the four people were. I recognized the color of the car that night as being a light brown, it stood out in the dark. That is the only way I just recognized the car, nothing else. I am not saying positive it was Herbert's car, but I think it was his car, that is what I am saying.

I recall testifying on direct examination about having some talk with Dr. Norris. He was a commission man. I had been doing business with him before. On this occasion, I went to him and asked him to sell me. He said "Sorry, we have trouble there. What could we do, we can't sell it. If we are going to, we are going to take a chance on having the union take their own men off and we would have to close [fol. 450] the business." He told me that he did not want to have trouble with any union, not exactly those words, but in substance. I had talks with him about selling me poultry or refusing to sell me on several occasions. He told me that on account of the union, I couldn't load my truck, and he couldn't sell me.

Q. And you testified that way in the criminal trial, didn't you?

A. Yes, sir.

Q. Now, let me read to you now, will you listen to these questions and these answers and tell me whether you heard the questions and made the answers to them:

"Q. Did you deal with Mr. Norris?
"A. Yes, with Doc Norris.
"Q. And did he refuse you credit?
"A. He never refused us credit, no.
"Q. Did he refuse to sell you chickens?
"A. That is right.
"Q. Did he refuse to sell you chickens for cash?
"A. Absolutely.

"Q. He did?

"A. Absolutely.

"Q. Now, name the time and place where this refusal on his part took place.

"A. It was a time when I was unable to buy any poultry. I saw Doc Norris at the railroad at the New York Central. He had four cars there that day, and I said 'Doc, I want some poultry'. He said 'I am sorry. I am sold out.' I said 'Doc, if you want cash, I will give you cash'. He said 'How can I sell you poultry if I haven't got any. I am all sold out'."

That is the time you testified about in your direct examination, isn't that correct?

A. Yes, sir.

"Q. He had four cars that day and I said 'Doc, I want some poultry'. He said, 'I am sorry, I am sold out'. I said 'Doc, if you want cash, I will give you cash'. He said 'How can I sell you poultry if I haven't got any. I am all sold out'."

Q. Do you remember that?

A. Yes, sir.

Q. He said he was all sold out. That is right? Do you remember that testimony?

A. Yes, sir.

[fol. 451] Q. Now, will you say that you testified at the criminal trial more than two years ago that when you talked to Doc Norris he told you he couldn't sell you because the union wouldn't let him?

A. That is another occasion.

Q. Did you testify?

A. Yes, I testified to that.

Q. At the criminal trial?

A. Yes.

Q Mr. Harnett, I want to read to you a part of the summary of your testimony as agreed upon between the Government and the counsel for the defense in that criminal case, and please tell me whether that is correct. The statement is on page 93 with respect to Norris.

"With respect to Norris, I bought from Norris as late as April, 1929. He refused me, as I have testified, in February or March, 1928. It isn't a fact that he refused to sell

me because I had not paid our bill or because I had given him bad checks. He never did sue us. I have paid him in full. At this time we are paying Norris off at the rate of $25 a week, for a business transaction this past April, not for transactions at that time."

Is this testimony which we have just referred to, is that correct?

A. Yes, sir.

Q. When he told you that, he was sold out? Is that right?

A. Yes, sir.

Q. "He refused me, as I have testified, in February or March, 1928. It isn't a fact that he refused to sell me because I had not paid our bill or because I had given him bad checks. He never did sue us. I have paid him in full. At this time we are paying Norris off at the rate of $25 a week, for a business transaction this past April, not for transactions at this time."

That is correct?

A. I never said that.

Q. Is that a correct summary of what you said?

A. No, sir, I never said anything like that.

Q. Is that a fair summary of what you said?

A. No, sir, I didn't say it, I didn't say that.

Q. Didn't you just a few minutes ago then say that every time that you talked to Doc Norris, he refused to sell you poultry? He told you that he couldn't sell you because the union wouldn't permit him?

A. On several occasions, I wouldn't say exactly every time, but on several occasions. We had so much trouble with them on so many different occasions that he told me [fol. 452] that on several different occasions.

The Witness: Doc Norris did tell me sometime that he couldn't sell me because he was sold out. He didn't tell me on those occasions.

I testified to going to the race track with Sam Lipkin. He used to be the collector. I didn't give him any checks which were returned. I never had any personal dealings with him. I never borrowed any money from him. He doesn't claim that I borrowed any money. At that time I operated a retail market, and then I operated as a wholesale and retail market. At other times I discontinued our

wholesale end of it and sold only retail. When we were paid by Gordon or by Hirshon or anyone else $200 a week or less, we only continued a retail market. When we conducted a retail market we had union shochtim, and the union shochtim that worked for us in a retail market were to get $45 a week. They were to get $45 a week for killing the chickens or poultry only when it is sold to the householders, and not to the butcher. Before this association, when a butcher would come in and want the shochtim to kill poultry in our market, they would do it. Under the rules of the union, when we employed union men, if we conducted a retail market, we were permitted to pay $45 a week to the shochtim. It is not so, that that would be after we notified the union that we were going to conduct simply a retail market. We did notify the union that we were going to have a retail market. They did not say they would send us a shochet at $45 a week. When we wanted to conduct our business as a retail market, we would want only a shochet who would get the rate or scale of wages [fol. 453] paid to a shochet in a retail market, $45 a week. It wasn't the regulation or rule of the union, that when a shochet was employed at $45 a week he was to kill poultry only when sold to the householders. We did not have difficulty with the union. When we sold to the butchers, then we were conducting also a wholesale business, and then the union required us to pay $65 a week to the shochet who would kill for the butchers. We sometimes paid more than at other times to the shochet, depending on the kind of a market we ran. When we were selling to the butchers, we were not obliged on all occasions to pay a shochet higher wages than when we were selling direct to the householder. That wasn't exactly the rule of the union. I remember there was a time when a shochet refused to kill some chickens in our place, and when the shochet refused to kill chickens, the helper refused to work. We were paying the shochet at that time more than $45 a week. That wasn't during the time we were not supposed to sell wholesale and were getting $200 a week for it, or during the time that we were only to conduct a retail market and were on the sly selling to wholesalers. There was such a time, though. At that time when the complaint was made that though we were getting money not to sell wholesale, we were selling to butchers, we paid our shochtim retail wages, which is

$45 a week: It isn't so, that a shochet getting retail wages under the rules of the union would refuse to kill poultry sold to butchers. It isn't so that he did refuse and could refuse to kill for butchers. I cannot answer yes or no as to whether I insist on our shochet killing for the butcher or the household regardless of whether his wages were $45 or $65.

I never had any union trouble in 1927 or 1928 or any [fol. 454] time. During the whole of the year 1927 my employees who were union men left our place of business and refused to work for us twice, and in all of 1928 once. In 1927 I never employed any help that wasn't union help. During the two weeks in 1928, I had employed some scabs. It wasn't a case of the union. Weiner did not come in and tell me after that that I ought not to continue to employ scabs and ought to re-employ union men. I did discharge the scabs and re-employ union men. That is one of the occasions in September or October, 1927, that I was talking about. The second trouble was about December 1927. I was then employing union men. They walked out on me. They were out a few weeks. I employed scabs during that period that they were out. The union did not demand that I reemploy union men. I discharged those scabs and took union men back in our place. In 1928, I had my troubles in March or April. The union men left me and stayed out until about June. During the time the union men were out, I did employ scabs, and some time in June I discharged the scabs and reemployed union men. I had no complaints about my not paying the union scale of wages to the shochtim. I don't say I paid the union wages, but it was never any complaint. I think on one occasion the union men got a little less. There were no times when I asked the shochtim to kill more than they were required to kill under the agreement with the union. I always employed union men. There was never a time when I would not. None of the boys on the street were called in to help.

I testified here that some commission men told me that the union would not let them sell to me, and I testified to [fol. 455] that effect at the criminal trial. I am sure about that. Outside of Mr. Norris, the names of some of the commission men who told me they would not sell me because the union wouldn't let them, was Jack Bloom. At that time they did not use those exact words, but words

to that effect. On occasion when I went to West Washington Market, he says "I will sell you some poultry but what could I do, they won't load you". Bloom told me that the union won't load me. That was all that was said. I can't remember another commission man's name that told me he wouldn't sell me because the union wouldn't let him. Others told me they can't sell me, they can't do it. That is about all. As I told you before it was Doc Norris and Bloom who told me that the union wouldn't load me. And those were the only two that said that.

At the first meeting, there were about thirty market men in Grabel's Hall. Every one of them paid. There were four of them who paid $350. I am not committing myself to the exact amounts. At less than $350 and over $300. There were a couple, about ten, paid $250. About five at $200, the rest you can say could average about $100. I gave about $50, I got off the lightest. I saw every one give his check. I was sitting right next to Sam Lipkin, I was a few feet away from him. The four that gave $350 were Mintz. He may have given $400. There was Hirshon. I don't know the exact amount he paid, but it wasn't over $300. There was the Howard Poultry Co., they gave pretty near $400. There was no other that I can recall who paid $350 or over. Outside of two under $100, the rest were $100 or over. Sam Lipkin got all the checks that day. Benjamin Simon was not at that meeting. We discussed how we could stop some of the butchers from refusing to pay their [fol. 456] bills. Somewhere between thirty and forty people were there, and they collected about $8,000, an average of more than $200 each. It was a tax based on one cent a pound for every pound of poultry we sold. There was talk about making the butcher pay his bills, but there was no such talk for forming the organization for that purpose. We were trying to find a way to stop the butchers from defaulting on their bills, and that is one of the reasons we were there for. There was a lot of discussion about finding a way to make the butchers pay. I lost a lot of money to some of the butchers, and complained about it, too. One of the main purposes was to make money, to try to better the business and make money. I think that is the reason that we went down there. The market men

were discussing ways and means to stop the butchers from failing to pay their bills, and how they could go on and do business and make a fair profit above their overhead. There was complaint that the amount that we were charging for poultry wasn't enough to cover our overhead.

Redirect examination.

By Mr. Rice:

The Witness: On the occasion that I saw the Packard car following me along Atlantic Avenue, I turned at several points. It was not the natural route that I would take. The Packard followed me on that route several miles until we got to the market.

The occasion that I told Joseph Weiner that when I needed union men, I would call him, was when we just got in a lot of poultry from Baltimore, and Joe Weiner come over and he says "You take four men". "You can load poultry in New York", but I know what those four men meant. They worked it in other markets.

[fol. 457] Q. Did you know whether or not it was the practice of the union to require markets to take four members of Local 167 and two schochtim, whenever the market men refused to pay one cent a pound or sold to strange butchers?

Mr. Eisler: I object to the question on the ground it is calling for a conclusion of the witness. We want facts in this case and not what his conclusion is.

The Court: Objection overruled.

Mr. Eisler: Exception.

The Witness: They did. I knew that that happened on a number of occasions during 1927 and 1928. That was their practice. I do not know of any instance where either one of the unions required a market to take four members of Local 167 and two shochtim if they had not refused to pay one cent a pound on poultry or sold to strange butchers. On this occasion when the Packard car was following me, I was driving about two miles an hour. I recall the occasion when I testified at the criminal trial. I testified at that time to the best of my knowledge. I may have been a little nervous.

When I testified at the criminal trial that Doc Norris simply told me he was out of poultry, that was the one occasion at the railroad when he gave me to understand he was out of poultry. There was another occasion when he told me he wouldn't give poultry to me because of the unions. I was not asked at the criminal case all of the occasions when Doc Norris refused to sell me poultry. I was just asked certain occasions, and I explained those occasions. I was only asked as to any occasion when Doc Norris said that he couldn't sell me poultry. And I did not understand I was being asked as to all the occasions when Doc Norris said he couldn't sell me poultry because [fol. 458] of the union.

Q. Now, are there any other explanations you would like to make as to the differences between your testimony here and at the criminal trial?

A. As I said, there are so many different occasions. We dealt mostly with Doc Norris and on other occasions—this is the first time that we ever had this trouble. I offered to give him cash and they wouldn't load me. My troubles continued on and off for about a year. I tried to purchase poultry in West Washington Market, I should say on a hundred occasions. I had difficulty on a hundred occasions during the year 1927 and 1928.

The Court: Why did you fail to state at the criminal trial, after that telephone conversation with Rubin over the telephone, that Charles Herbert told you not to sell to strange customers? What is your explanation?

The Witness: I don't know. I don't know if I was asked that or not. It may be a mistake. I don't know, your Honor, but that is the truth of it. I may have misunderstood, possibly. I was on the stand there for about three days. I possibly may have said something I didn't understand.

Q. Are there any further explanations that you wish to make?

A. That is all.

Mr. Perlman: You asked him how many times he was refused the poultry, and he said 100 times. Your Honor recalls that. It is very interesting here. It is very differ-

ent from what was said in the transcript of the record for the Circuit Court of Appeals on page 83:

"You are correct in understanding that there were only two occasions when I personally was refused a sale of poultry in the West Washington Market or any other place and one of these occasions was in November, 1927, and the other occasion was in the latter part of February or early part of March, 1928."

Mr. Rice: Let me ask you a question about that.

Q. Those are the two occasions that you refer to. Will you now state what you mean by the two occasions?

A. By the two occasions I meant there were two lengths of time that I could not buy poultry at the railroad or West Washington Market. When I said 100, I mean for every specific time when I attempted to go and buy poultry. I may have gone to ten commission men on one day.

Q. Your trouble on this occasion extended over a period [fol. 459] of time, a period of weeks?

A. A period of weeks, that is what I meant for each occasion.

Mr. Kroppy: I would like the record to show a motion on my part to strike out the testimony which witness Mack Harnett gave, on the ground that none of his testimony showed a conspiracy in restraint of interstate commerce, and on the ground that the acts and declarations which he testified to were not shown to have been committed in furtherance of any conspiracy in restraint of interstate commerce.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 460] SAMUEL EDELSTEIN, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

(The following testimony, given by this witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to its materiality and competence:)

Direct examination:

The Witness: I am in the live poultry business. I bought my poultry from G. Z. Hawk, a commission merchant. I have been in the live poultry business about fifteen years in Brooklyn. I attended the meeting of marketmen of my district during the fall of 1927 on Pitkin Avenue. There was quite a few of them present—Hirshon, Morris Gordon, Hellman, Benny Danziger, Harry Rubin, Louis Mirotznick, Abe Franzel. I cannot think of any more. There was no chairman.

I remember talking with Hirshon about a customer of mine named Liebowitz. He said I shouldn't give him any poultry, and that I should pay $20 a week to the association. I sold to Liebowitz after that. That was two years ago. Nothing happened after that. Tootsie and Charley Herbert and Harry Shomer told me not to sell Liebwitz. That is all they said to me. I am acquainted with Carl Firestone. I think he was with those three men when they came in and told me not to sell, but I don't remember.

I had a conversation with Tootsie Herbert down at Charley Hawk's stand about selling to Liebowitz. It was two years ago; I don't remember the date. He asked me if I am selling Liebowitz poultry. He said "How much [fol. 461] are you selling him?" I said between four and five hundred dollars a week. He said it's funny. That's all the conversation I had with him. This conversation was in West Washington Market the day before the conversation in my place of business.

The next day, when they came into my place of business, they did not do anything else besides telling me not to sell to Liebowitz. My shochet was killing that day and he kept right on killing when they came in. I don't remember whether they spoke to my shochet at all. As to this $20 a week that Hirshon asked me to pay, I paid it to Koslow for about three or four months.

I handled about eight to ten thousand pounds of poultry a week. I remember about this time two years ago, after these conversations about Liebowitz, going over to the Erie Railroad in New Jersey for poultry. I pulled up my truck to load. The weightmaster told me to pull in to load; so Manny Herbert went over to the weightmaster and told him not to load me any poultry, and the man would not

load me. That's all he said. I told the weightmaster to send the load to the West Washington Market. Then I had to promise Tootsie Herbert that I would not sell any poultry to Liebowitz.

This $20 a week that I used to pay to Sam Lipkin at the beginning, and then to Jake Koslow, always at the end of the week, on Friday or Saturday. Hirshon and Koslow asked me for more money. They wanted I should give them $50 a week. I told them I cannot afford it. I paid them $35 a week for about two months. No one else ever came with Koslow when he collected the money. Carl Firestone used to come once in a while. Koslow never came to my [fol. 462] place and asked for $50.

After refreshing my memory, I recall having a conversation in my place of business with Firestone and Koslow. I had a coop of cheap poultry, I don't remember the date, but it is two years ago. I sold it to a fellow for 45 cents a pound. Jake Koslow and Firestone came in to me and told me "You think you are putting something over on us; you are not putting anything over on us", and they went away. When I got to West Washington Market I couldn't get poultry unless I pay a fine of $25. Jake Koslow told me that. I paid the fine to Mike Lax. I got poultry after that. I never attended a meeting of the poultry dealers and butchers or marketmen. I remember Carl Firestone and Jacob Koslow came into my place of business and accused me of paying $50 to an association to fight them; that was some time in February, 1928. They came in to me and stood a little while. I said to Jake Koslow "What do you want?" He says "Dassent I come in here?" I said, "Sure the place is all yours." He stood a little while and then he said to me "When we asked you $50 a week, you cannot afford it, and last night you gave $50". The next day I could not get poultry in the market.

On one occasion Koslow and Firestone told me not to sell a butcher at 458 Howard Avenue. I said "What, that man buys poultry in my place already almost two months". They didn't say to me anything, just said I should not sell any poultry. No one said anything to me about the price at which I was selling poultry. I remember now they spoke to my shochet. After they spoke to him, this shochet would not kill any more poultry for Liebowitz.

[fol. 463] Cross-examination:

The Witness: I had a union shochet. I kept my doors locked and had the shochet kill before union hours; that is a violation of the union rules. My shochet, when he refused to *m*ill, may have said "You are trying to have me kill before union hours." I don't remember. I remember I did tell him to come there before union hours.

I met Arthur Herbert in the market with Mr. Hirshon as soon as I was handed the subpœna. I think it was the summer of 1928, the day before I saw the District Attorney. I told Arthur Herbert that I had been called by the District Attorney. He asked me what I am going to say. He did not tell me I should not say this, that or the other thing; he did not ask me to correct anything. At that time I was unfriendly with Herbert, I do not know why I went over to talk to him about it. At that time I was not having any trouble with the union about getting my poultry, no trouble of any kind. I had trouble with the union during the year 1927 or 1928 about twice or three times. I had a man by the name of Patsy working for me. Arthur Herbert called on me and asked me to arrange to have Patsy become a member of the union. That was the only man that I had. Arthur Herbert said I should have more than one man. I had an argument with him about that time. There was never any strike or any interference with my business at all. The only thing is that Arthur Herbert told me not to deliver to Liebowitz, who is my brother-in-law. I do not know any reason why Arthur Herbert asked me not to sell or deliver to Liebowitz. I do not know of any difficulty between Liebowitz and the union.

[fol. 464] Between June of 1927 and September, 1928, I saw Arthur Herbert almost every day in the week, but very seldom I spoke to him. He came into my place on one occasion and went into the back room; that was very early in the morning, long before 7 o'clock. The claim was made that my shochet was killing before the commencement of union hours. The only time there was any interference with my getting poultry was at the Erie Railroad in September, 1927, about the time of my difficulty with my shochet; that was the day after the time when Herbert came into my place before 7 o'clock in the morning and complained about the shochet killing before the commencement of union hours.

I was not able to get any poultry. The union men would not load me. I do not know who told him not to load me. With that exception, I at no time had any difficulty in being loaded or getting my poultry.

When Carl Firestone came into my place with Mr. Koslow, Koslow did the talking. Firestone did not say anything. Koslow said to me that I wouldn't get my poultry until I paid my fine. I said, "Well, I will call up my wife and pay the fine." He says, "I am going to send Mickey Lax to get it." I called up my wife and told her to pay the fine of $25 to Mickey Lax, who would come to collect it. I never had any conversation with Mickey Lax.

The time I had trouble about getting poultry at the Erie Railroad was the day after my trouble about the shochet. The Liebowitz matter and the shochet matter happened the same morning. There were two different things. The shochet was killing for Liebowitz in my place and was working before union hours. That is why they were both taken [fol. 465] up at the same time. The same day I had trouble at the railroad and that trouble was that the weighmaster of the commission men told me to load my poultry and the union men would not load it. The receivers were willing to sell me, but the union man would not load.

When I first went to the railroad I could not get any poultry. I told the weighmaster to send all the poultry to West Washington Market, and when I got to the market, Tootsie told me not to sell poultry to Liebowitz. So I had an argument and I said I would not sell to Liebowitz, and then I got the poultry. It was only that one instance altogether.

Mr. Kroppy: I move to strike out the testimony of the witness on the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

The following testimony was given by this witness at this trial:

Cross-examination.

By Mr. Perlman:

The Witness: Since 1928 I have not had any trouble in the buying or sell of poultry, nor with any union. I am now

engaged in the poultry business, wholesale and retail. I am in no combination with anybody. I do not know of any meetings that have been held since 1928. I employ union men and pay union wages.

[fol. 466] SAMUEL BERNSTEIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at the criminal trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I am in the retail poultry business in Brooklyn. I buy my poultry from Phillips & Skloot, marketmen. I bought my poultry during the summer of 1927 at Phillips & Skloot. I did not try to buy poultry anywhere else at that time for my store. I did try to buy poultry for my other store at 380 Kingston Avenue, which I owned as partner, from somebody else.

Q. What happened when you went there?

Mr. Jacobson: That is objected to as not binding on the defendants.

The Court: Objection overruled.

Mr. Jacobson: Exception.

The Witness: I went to Louis Gerber and told him I opened up a new store at 380 Kingston Avenue and I said "I want to buy poultry for that store in your place." He said "Very well, I will sell you poultry for that place." So I went in and I bought there on Thursday or Friday, and I come back Monday and he told me I cannot get any more poultry in that place. I asked him the reason why, so he told me, he says: "You belong to 880 DeKalb Avenue"; I should send my partner down. I says, "But my partner is the inside man; I am the buyer." I says, "As far as I am [fol. 467] concerned, I am the only one that will buy poultry for that store, and nobody else." So he says to me, "I am sorry, I cannot give you any poultry." So I had to send my partner down and get them to kill the poultry.

Q. Did you ever try to buy poultry from Lokietz?

A. Yes. Around December 1927.

Q. What happened then?

Mr. Jacobson: I object to that; it does not appear that either one of the men about whom the witness testified were members of the Chamber of Commerce.

The Court: Objection overruled.

Mr. Jacobson: Exception.

The Witness: I went in to H. Lokietz & Sons and Lokietz told me "Yes, I will give you all the poultry you want." We started to kill poultry there and the shochet refused to kill them. I went back to Phillips-Skloot. When I was in Gerber's place, he told me "I cannot sell you any poultry." "You have got to go back to your own place." I went back to Skloot and st-yed with him the whole time. I did not buy any poultry from Taits.

I had a conversation with Samuel Sahn some time in November, 1927. I happened to kill in New York that time, and I come back that morning from New York and he says to me "What is the idea Sammy?" So I says, "You know, Sammy, I got to make a living in this business, and I cannot afford to pay those prices so I have to go out and look for a little cheaper stuff." He says "You go back to Phillips-Skloot and we will straighten it out." Then I went back to Phillips-Skloot the next morning. I bought all my poultry there. Skloot said "We will give you $50 a week if you will buy all your poultry," meaning that they will give me $50 a week off the bill cheaper than anybody else that buys poul-
[fol. 468] try, being I was a big dealer. I got $50 a week, not in cash, but off my bill, about four or five months. Then he gave me $25 a week about three or four weeks, up until about March or April, 1928. Then I got nothing. He told me I would get $50 a week off my bill, being that I was a big customer, but I have to pay the full price.

After I made this arrangement I went to Lokietz to buy my poultry. I couldn't get the stuff direct. I got it indirectly. I had to call him up and meet him half way, somewhere in the street. That happened quite often. None of the defendants ever said anything to me about the payment of a cent a pound.

Cross-examination.

By Mr. Jacobson:

The Witness: I had a retail poultry business on DeKalb Avenue in Williamsburg section, Brooklyn. The Williamsburg section is distinguished from East New York section because Williamsburg is called Brooklyn and East New York is called Brownsville. I opened another store in Kingston Avenue; that is in the Brownsville section. The butchers and chicken dealers in Bedford Heights deal with both Brownsville and Williamsburg. At that time I was dealing with Skloot from the DeKalb Avenue store and my purchases were about 10,000 pounds a week; that is a pretty big quantity in the trade. Nobody told me not to buy from Skloot. Mr. Gerber told me I cannot buy poultry from him, I personally—my partner, yes. Gerber's business was wholesale business, and retail. He was a marketman. I don't know whether he was one of the Chamber of Commerce. I do not know whether he was a member of the Retail Dealers Association.

[fol. 469] I was a member of the Chicken Dealers' Association in that section. I don't know that our association threatened to boycott Gerber if he sold goods to me for my Kingston Avenue store. I do not know anything about that. Gerber didn't tell me the reason that he could not sell me or the Kingston Avenue store was that our own Butchers' Association threatened to boycott him if he sold it. After Gerber refused to do that, I went back to Skloot. I got the $50 a week before that. When I went to Skloot I asked for an allowance of one cent a pound. I happened to meet Sam Sahn on the street one day, and I told him about the troubles I was having with Skloot. I told him I wanted one cent a pound from Skloot if I would deal with Skloot entirely. Sam Sahn said he would talk to Skloot and see if he could make some arrangement for me. He came back and said that the best Skloot would pay would be to give me half a cent a pound. I was then buying about 10,000 pounds a week, and a half a cent a pound amounted to about $50 a week. That is the $50 I got. I considered that Skloot thought it was worth $50 a week for him to keep my trade in one place.

While Skloot was giving me this money and trying to confine my trade to his place, I was going to other places

and buying goods, but not for my place. I was talking about Kingston Avenue, that is not my place. This arrangement was made before I opened the Kingston Avenue place, and I went to other places to buy goods only for Kingston Avenue. I knew that Skloot was selling me on credit 10,000 pounds of goods a week and that he wanted to keep tab on what I was doing. I had been a slaughterhouse man at one time. I closed the place and made a settlement with my creditors.

[fol. 470] By Mr. Kaufman:

The Witness: I was president of the Williamsburg Retail Poultry Dealers Protective Association during 1927 and 1928. As president of that association, I attempted to cooperate with the Chamber of Commerce a couple of times. I don't remember ever asking the Chamber of Commerce to attempt to request different members to stop selling merchandise outside of the vicinity of their operations. I do not remember whether any such written request was made by the secretary of that association or by Mr. A. Miller, the manager of that association. I don't remember whether a written request was made by the association of which I was president, to the Chamber of Commerce that a standard price be charged all retail poultry dealers. I don't remember, because I did not sign anything. If I was signing, then I would know what I am saying. As president of the association, I did not know half the time what Mr. A. Miller, the manager of the association was doing. I did not know what Mr. A. J. Goldlang was doing; Mr. Goldlang was secretary.

I don't remember that a request was made by our association to the Chamber of Commerce that the Chamber of Commerce keep their members from selling to new retail poultry stores where they would injure patronage of stores now existing.

Redirect examination:

The Witness: I had a conversation with the defendant Sahn at the Chamber of Commerce. I guess it must have been somewhere around January or February of 1928. He called me up. I came over to the Chamber of Commerce. He told me "Sammy, you are buying all your poultry off Phillips-Skloot. We have a little trouble with Phillips-

[fol. 471] Skloot and I want you to do me a favor and do not go tomorrow morning to Phillips-Skloot; that is, you go to Lokietz' place and buy your poultry." So the next morning, I went to Lokietz' place and bought my poultry, and the same afternoon Mr. Sahn called me up again and says to me "Tomorrow morning go back to Phillips-Skloot". I went back the next morning to Phillips-Skloot. Sahn told me he has got a little trouble. He said about money matters; I do not know what it was. It was some money matters, he said; he did not want to pay a cent a pound to the association. At the time that Taits went out of business I did not have any conversation with Skloot about it. I had no conversation with Sidney Rosenstein or David Kaufman.

Recross-examination.

By Mr. Jacobson:

Q. Is it true that at a meeting of your association, Charles Goverman and Joseph Hasenfratz said that they wanted to have a strike called upon Mr. Hirshon because Mr. Hirshon charged one cent a pound more than all the other chicken dealers?

Mr. Oseas: I object to that.

The Court: Objection sustained.

Mr. Jacobson: Exception. I submit, if your Honor please, the testimony may be competent as contradicting the testimony of this witness.

The Court: It may be, as far as that is concerned, but call this witness as your own.

The Witness: When I signed that affidavit, Mr. Samuel Sahn in the Chamber of Commerce asked me if I had any trouble at that time, before I had the store 380 Kingston Avenue. I said no, I had no trouble there, and I bought poultry wherever I please. He asked me if we had any kind of a meeting about calling a strike on Mr. Hirshon, and I said yes, we had a meeting. When I made these statements they were true at the time. In my place, I never [fol. 472] had any trouble, until I opened the Kingston Avenue Place, I had trouble. My partners had trouble. In my place, DeKalb Avenue, since I am doing business I never had any trouble at all. When I signed this affidavit

I was discussing only DeKalb Avenue at that time. I told them exactly what happened and they read the affidavit off to me and I said "Yes, it is true". They didn't mention the other place, just DeKalb Avenue.

Mr. Kroppy: I move to strike out the testimony on all the grounds previously urged.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 473] Louis Sorkin, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given at a former trial held in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality:

Direct examination:

The Witness: My business is live poultry under the name of B. Taits, Inc. I am a stockholder and secretary of B. Taits, Inc. B. Taits is president and treasurer. I have been connected with B. Taits, Inc., since about March, 1927. Before that time I was in the same business under the name of Bernstein & Sorkin. I attended two meetings of marketmen during the summer of 1927. I think Benjamin Danziger went with me. The names of marketmen who attended are Hirshon, Mintz, A. Franzel, Sam Powell. I cannot recollect any more. I don't know whether Kadin or Koslow was there. Morris Gordon was there at one meeting. There was no regular chairman. The chairman both times when I was there was Morris Gordon. Those two meetings were held in Grables Hall, in the Brownsville section. Most of the marketmen of Brownsville were not there. There were about twelve at those meetings. I can't remember everything that was said. It was said that our business was no good, was not good enough, and we were trying to better it. The way it should be bettered was to take a better price, cut down expense. That is about all I can remember. There was no result of that meeting. What was said was we should try to cut down expense.

With reference to these Brownsville meetings, I remember Dave Hirshon, Morris Gordon, Koslow, Abe Franzel,

[fol. 474] Kadin and Resnick were present. No others that I remember. It was said that we should contribute a cent a pound towards the association from every pound of poultry we sold. We spoke about credits, that we cannot get our money in from the customers. With that money we were paying for protection from the union. I mean that money was to be used to fight the union in case it was necessary. I don't know of any other expense.

I only paid a few dollars. I didn't pay a full cent. I handled about 20,000 pounds of poultry a week. If I handled that at a cent a pound, I would pay about $200, but I didn't pay that much. I just paid $75 twice, and once during a holiday I paid $185. I paid three times. Nothing was said that I recall at this meeting about what this one cent a pound was to cover besides the protection from the union. I heard Hirshon talk at these meetings. He said the same thing. He did not say anything about hiring men with that money. The leaders of the association were going to protect this business for us. They didn't tell us how. I asked Hirshon, and he said there is plenty of expense on it, and what's the use of knowing. When I refused to pay, I spoke to Koslow and Sam Lipkin. They collected the money. I made my arrangement to pay $75 a week instead of a cent a pound with Hirshon a couple of weeks after the first meeting. If I didn't pay a cent a pound Hirshon said he would stop me from getting poultry. I paid the $75 a week for three weeks. Never paid anything after that. I once paid $185 to Hirshon during the holidays, around Easter, 1928. I refused to pay it at first because I couldn't afford, and he said if I don't pay in I won't get any poultry. After I paid the $185 I got poultry. Before I paid the $185, [fol. 475] I was stopped about four days I believe. The first time that I stopped paying I went to the West Washington Market; that is, I sent Mr. Danziger to the West Washington Market. I had no poultry. Maybe for another day, until I paid again. I believe I paid Koslow. My shochtim were ordered not to kill the poultry that day. Charley Herbert, the delegate, ordered them not to kill the poultry. The workmen didn't show up to work, and stayed out until I paid up again. While my own workmen were out, they sent a different set of men. They sent Julie Rosenstein and Aaron Weisler and Charley Gershowitz. They didn't do the right work, what was necessary, what was told them to do.

On that Sunday morning, right after these men came to work, they came in late and when the orders were killed two of the men that were delivering the poultry, took their time. Instead of delivering the poultry in a short time, like fifteen or twenty minutes, they took their time and stayed away from the place for about two hours. Then they came back and went in the restaurant and stayed there the rest of the time. They did the very same thing every day. They stayed with me two weeks. I complained to them about the way they were doing their work. They said that's the way they are doing their work and they were ordered that way to work. That's all they answered me. I believe Charley Gershowitz said they had other bosses. I was there the following Wednesday when Mr. Goverman and Mr. Kessler came in. When we started to kill the poultry, Mr. Kessler walked inside and told Mr. Goverman that his tires were cut in his car. When he went out, he started to holler, "Who did that, it is nobody else but the workmen who did that", and Mr. Kessler also objected to this and I do not [fol. 476] remember which one of the workmen walloped and knocked Kessler down. I did not see Firestone anywhere around at that time. I was inside. When Kessler and Lipkin came around, they simply asked for money. I sued the Chamber of Commerce. During that suit there was a conference held in my lawyer's office. There were present David Hirshon, Samuel Sahn, Benjamin Simon, the supervisor. I don't remember anybody else. My lawyer was there, Mr. Nizer. There was no lawyer representing the other side there.

Cross-examination.

By Mr. Jacobson:

The Witness: There were some payments made by my concern at $75 a week. I made that payment twice. Then I paid $185 on one occasion. I don't remember the dates. The Taits firm started business the early part of 1928. With reference to that time, the payments of $75 a week must have been some time in April, 1928. The payment of $185 was made the end of April, the same month. I got trouble when the firm was Bernstein & Sorkin. I was present at the meeting in June, or May, 1927, when they talked about credit, cannot get money from customers.

They were talking about the customers' credits, butchers and dealers, to whom the marketmen sold. The condition which had existed up to that time which occasioned this talk was very bad. It is existing yet. It existed before that time. Ever since I remember, and I am in business for thirty years. These butchers made the credit so bad. They took merchandise and when we came to them for money they ain't got — to pay.

There had been talk before May and June about these very things. They had been calling meetings before May. The same kind of such talks had been going on from time to time for a number of years. At all of these meetings [fol. 477] we were discussing not to sell to a customer that owes money in a different place. If he owes money he should not be sold. Nobody was told not to sell a man who did not owe any money. It was just a question of not selling some one else's customer until he paid the other man. There was some discussion about butchers closing stores and moving to another district. Some butchers used to do that. They used to close up the store and open a store somewhere else under a different name. These butchers were described by the marketmen by the number of the store, so that when a butcher moved from one district to another, all he did was to change his number in a different district, and that was the condition which we discussed. I know what run-around trade is. People that buy all over.

At these meetings it was said that the marketmen should not buy too much stuff for himself—not carry a big stock. The reason is that the poultry shrinks after it is left over—dries out. There was talk about members submitting a list of regular customers, so that it could be decided at any time which chicken dealers were regular customers between marketmen. And a new arrangement was talked about, taking some customers from one marketman and giving them to another marketman. We got some. B. Taits got some of those additional customers. I do not know how many, a few. The marketmen who got additional customers were supposed to pay for those to those marketmen who gave them up. I think that is what our $75 a week was for. I do not know. We actually got those customers and sold to them. Our firm sold about 20,000 pounds a week. Our operating cost was about $850 a week.

That amounted to four cents a pound. It ran as high as five and six, according to the shrinkage, and it was with-[fol. 478] out bad debts. Before 1927 I did not have big losses because I was new in the business then. The shrinkage averaged about two or three cents a pound. It cost us then six or seven cents a pound to do business. We started business in the morning at seven o'clock. The union fixed the time at seven o'clock. Before that time we started business at five o'clock, and the marketmen themselves actually went in their own places of business and put on working clothes and aprons. They just prepared the poultry for sale. They worked sometimes to eight o'clock in the evening.

At these meetings there was discussion amongst marketmen who were present that the unions were becoming too strong, and that the marketmen were going to try to break the union. That was almost at every meeting mentioned. And by unions I refer to the helpers' and chauffeurs' union and the shochets' union. There was no talk as to how the marketmen would break the union. I do not know whether the Chamber of Commerce also wanted to break the union. All we were concerned with and the only meetings we had were with the marketmen over in Williamsburg in Brooklyn. And so far as the association in Williamsburg was concerned, it was their hope to be able to break the union.

We were going to raise a penny a pound for the purpose of breaking the union. That penny a pound was to be paid to the association. I do not know how the association was to use this penny a pound for the purpose of breaking the union. No leader ever told me. I never heard at those meetings that the marketmen were going to employ gangsters to operate against the union. All I know is that a penny a pound was to be collected for the purpose [fol. 479] of fighting the unions. There was no talk about employing gangsters or guerillas against the union.

Redirect examination:

The Witness: I was still attending meetings in April, 1928. As to these payments of $75 a week, I said I paid them to the marketmen who gave me the customers. I know that because I got the customers from other marketmen. I paid the $75 to Koslow and Lipkin. I do not know what Koslow and Lipkin did with this money. I do not

know whether they gave it to any marketmen. There was nothing said about employing gangsters at all. I am sure. I said that men were to be hired to protect the trade for this $75 a week that I paid in order that they could not buy elsewhere.

Recross-examination.

By Mr. Jacobson:

The Witness: We were told not to sell to strange customers. Even if they did not owe any money. Some members of the association said that.

By the Court:

The Witness: We were not to sell to anybody who did owe us money. Koslow said that I should not sell to any customers from other markets even if he paid his bill. I did sell him. I asked him first whether he paid his bill. He showed me that he had paid his bills. I sold him, anyhow. I worked for Koslow before I became a member of the firm of Bernstein & Sorkin. I was his bookkeeper. I don't think Mr. Koslow discharged me. Maybe he did. I don't remember.

Mr. Kroppy: I make the same motion to strike out this testimony.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 480] WILLIAM COOPER, a witness called on behalf of the Government, having first been duly sworn, testified as follows:

The following testimony, given by the witness at a former trial held in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I have been in the poultry business, selling slaughtered poultry, about eight or nine years. My place of business has been at 238 East 121st Street for the

last three years. In June of 1928 I had two places, one place at 238 East 121st Street, and the other in the Bronx. I was getting my poultry in June, 1928 from Plotkin & Sorkin. I was with them for three years, until the 1st of July, 1928, when they closed up. At the time they closed up I had a conversation with Mr. Decker, a workingman from the market of Decker & Glass. He was to me on Friday and said to me "Mr. Cooper, your marketman is going to close up". He said would I buy my stuff when he closed up. "All right, when he close up I buy off you stuff." The next Saturday, I go to Mr. Plotkin & Sorkin's market, and I say, "Mr. Sorkin, where is your stuff?" He says to me "I ain't got any stuff; I sent you stuff." That was what he told me. They told me that they had no merchandise for me, so I says "Never mind, I will go to the market and get my merchandise somewheres else". I went to Glass and he gave me merchandise in the evening; that was Saturday night. Monday, I slaughtered my merchandise and Glass sent me some more merchandise to both stores. Monday, three o'clock, I received a call from Mr. Glass. He ask me that he has no stuff for me. He said the Cham-
[fol. 481] ber of Commerce does not permit him to give me merchandise, "otherwise they will revoke my license if I give you merchandise; they will take my employees away if I give you more merchandise". At first he spoke to me over the telephone and then I went to the market and spoke to him at the market. I came home and found my son at home, and he gave me a card to call for merchandise in the market the next day. I went to the market on Tuesday morning of Louis Peltz, the man whose card my son gave me. I came to Mr. Peltz, and told him that I am from 121st Street. So he informed me that he was at my house on the previous evening and left a card for me. I asked him what the price of merchandise is and he informed me that he will put it on the charge. He did not tell me the price. I got poultry from him three days. He then told me to pay cash, so I said "I cannot pay cash". He informed me "Wherever you buy merchandise you will have to pay cash". He informed me that wherever I buy merchandise the other people will give him the profit. I said I wanted to go somewheres else. He said "Go ahead". I went to Glass and he refused to give me. He said "I will have

trouble and the Chamber of Commerce will deprive me of my chauffeurs and other employees."

I also went to Louis Spatz and he refused me. At that market, I found Charles Gershowitz. I ask him "Why don't you permit me to get merchandise from Glass?" He says, "You belong to Louis Peltz." I asked him "Why don't you allow me to get merchandise, do you want to cut my throat?" Charles Gershowitz took me in his car and took me to Mr. Glass and instructed him to give me merchandise and I got merchandise there. During this period, I tried to get poultry from Rifkin & Wolosin, 155th Street and Madison Avenue. He said "I haven't got it". I also [fol. 482] tried Mr. Berkowitz in Mount Vernon. I slaughtered for three days and then I returned on Saturday and asked for more merchandise and he said no. He said they stopped off his car on the tracks. I was not asked for receipted bills in any of these places.

Cross-examination.

By Mr. Jacobson:

The Witness: I bought from Plotkin & Sorkin until they stopped doing a wholesale business until July 1st. Then Decker came to me and asked me to buy merchandise. At that time I did not owe Plotkin & Sorkin any money. After two or three days Glass refused to sell me any more. Then Mr. Peltz called at my store and left his card and I went to see him. He did not tell me to pay cash when I took out the stuff. After two or three days he asked me to pay cash. I owed him for those two or three days' business and I paid him. Then I went to Decker & Glass and to Spatz' place. I saw Gershowitz. I started an argument with him in the place and he threw me outside. Then he took me over to Glass. I said to Spatz "Mr. Glass wants to give me for credit". That was the argument. Gershowitz took me outside and told me not to argue. After the argument he took me over to Mr. Glass to get my stuff.

Mr. Kroppy: The same motion to strike out, on the same grounds.

The Court: Same Ruling.

Mr. Kroppy: Exception.

[fol. 483] HARRIS KESSLER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

(The following testimony, given by the witness on a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competence and materiality:)

Direct examination:

The Witness: I am in the poultry business, about seventeen or eighteen years, in Brooklyn. I buy killed poultry. I bought my poultry in the summer of 1927 from Sorkin & Bernstein. How much they charged me, so much I pay. They don't ask me how much I like to pay. I cannot tell exactly how much was the market. They don't tell me the market price. In the summer of 1927, one time I tried to buy from Sam Powell. I go in his market for spring chickens. He tells all right, you can take, and I come over for the spring chickens, and the shochet refuse to kill for me the chickens. I do not know the name of the shochet. He is still in the same place, the same man in the same market. I did not get any poultry that day from Powell.

In the winter in 1927, I came over to Mr. Sorkin. I want small poultry, three to three and a half pounds. Sorkin said to me "Kessler, go over to the market and find out a place where you get small poultry, and I say to the man he shall give you the poultry". And I go from Sorkin's market and I pass Dave Hirshon's market. Hirshon just came out from the car and asked me "Kessler what do you want?" My boss hasn't got for me for tomorrow and Wednesday night small poultry. I need Friday morning [fol. 484] small poultry. He said "Go over the market, there is small poultry, and pick out coops that are not taken". I come to Hirshon's market, and I pick out the coop and I marked it, and he said "All right, you come Friday morning and you get it", and I passed by Sorkin's market and I say to Sorkin "I got it". He said "From whom did you get it?" I told him Dave Hirshon. He said "All right," and I come Friday to Dave Hirshon's market, Mr. Hirshon said "I am sorry you cannot get the poultry". I must go back to Sorkin and take poultry, six, seven, eight, nine pounds apiece. This was on a Friday, and I

must sell to the people cheap, and women came to me and ask for small chickens, and I haven't got it, and I must give them a chicken that cost me $1.75 for 75 cents. I lose on these chickens $4.00 and I must give it for any price they give me. I deal after that by Sorkin & Bernstein.

I bought from Bernstein & Sorkin the whole time until Taits came into the market. Sorkin made him for a partner. He said "Well, I am going to break the corporation, I am going to give poultry to everybody at all that comes to the market". On Friday morning, I go to the market and mark up my poultry for Sunday and Monday. When I come to the market, the market was closed. By the market there stood Sorkin. I said "What are you going to do now?" "Well, Kessler, I am sorry, you must go back to Hirshon". I saw there the same coop that I had marked for purchase at Sorkin's place of business.

While I was buying from Taits during April, 1928, there was a disturbance there one day. That was April 25th in 1928, just in the morning, and I got my poultry killed and the poultry lay by the door of the market and I stood [fol. 485] there until they delivered the poultry to my door. Charles Goverman was in the market. He killed his poultry. I stood by the door until they delivered my poultry. Charles Goverman's machine, the front wheels, the tires were cut. He said he was going out to see Carl. He said "Carl, you are responsible for my machine". Carl was standing at that time on the sidewalk, a couple of feet from the machine. I would know Carl if I saw him again. (Defendant Firestone arose.) That is the same man. Goverman said "Carl you are going to be responsible for my machine". Then comes out Arkie Weissler and another fellow was there. (Witness identifies two defendants.) They give a good licking to Charles Goverman. They punch him and the blood runs from his mouth and all over and I came over to the market of Mr. Taits and Sorkin and say, "Look what they doing to Mr. Goverman." This fellow took me by the neck and pulled me up and st-uck me to the ground and tramped with me with the foot like mud, and then comes a policeman. They arrest him and it comes to the court but there is nothing.

B. Taits gave up all business after Easter in 1928. The whole time I bought from Mr. Taits and Sorkin, but after Taits closed I bought of Mr. Hirshon. I try to buy at Sam

Powell. Sometimes Taits cannot get the poultry from the market. Sometimes he said they stopped him the poultry and he sent me to Morris Hellman. I went to Hellman and got poultry. Before they start the corporation I bought from Mr. Hirshon. After the corporation I didn't buy from Hirshon. Then I was by Taits. I couldn't go any other place. Hirshon wanted to give it but Sorkin stopped me from getting it. After Taits went out of business I went back to Hirshon; that was in 1928. After Taits went [fol. 486] out of business Hirshon sold me.

At the time that Rosenstein and Weissler struck me, they said to me "If you go to tell anything, sometime you will be found dead on the lot. Keep away from this place". They said to me "Don't buy of Taits. Keep away from there".

Cross-examination.

By Mr. Jacobson:

The Witness: Then Taits was closed, Taits said to me "You must go back to the place where you came". While Taits was in business, I didn't go anywhere else. Taits closed the market in May or June, 1928. Morris Hellman, I was by him when Taits did not have poultry. Maybe sometimes I bought from him but not at this time when was the corporation. I am in the business over eighteen years, in the old Brownsville market. I don't deal always with one man. Maybe I bought from Morris Hellman three or four years before. I bought from Hellman because Taits did not have poultry. When Taits was closed, I go back to Hirshon because I cannot go any other place. They send me to Hirshon and I buy now from Hirshon. At the same time I was dealing with Taits I was buying from Hellman when Taits didn't have it. When I went to Hellman he sold me poultry. Then it was free for everybody, because Taits comes in and the market men in Brownsville say the market is open for everybody. How long a period of time it was that I deal with Hellman, I cannot tell you. When Taits did not have poultry, I only went to Hellman and Hellman sold me. When Taits came in the market he advertised his market is free to everybody who comes to get poultry. Everybody was free, but the only place I went to was Hellman.

[fol. 487] Mr. Kroppy: I move to strike out his testimony on all the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 488] Morris Schultz, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

The following testimony, given by this witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competence and materiality.

Direct examination:-

The Witness: I am in the poultry business, selling slaughtered poultry on the East Side. During the summer of 1927, I bought from the Pitt Street Poultry Corporation. I have been buying from them since I am in the chicken business, about eight years. I tried to buy poultry from Chast about October, 1927. I killed my stuff at Chast, and then Meyer Weiss came in and told me I got to go back to the Pitt Street Poultry Corporation; he took me by my arm and he was going with me to the Pitt Street Poultry Corporation, to the market. He told Isaacson "Here is your customer back". "I brought you another customer". Then I killed for two days, Monday, Tuesday and Wednesday; and Thursday morning, when I came to kill my stuff, the shochet refused to kill for me. I asked the shochet "Why do you refuse to kill my stuff?" And he said "I got an order I should not kill for you". Then I went over to Isaacson of the Pitt Street Poultry Corporation, and I asked him why he did not give me stuff and he said to talk over with Meyer Weiss, that Meyer Weiss said I got to go back to Chast because Chast wants me back with him. I said I would not go. He said "Then you will have to close up your store". They would not sell me stuff. Then [fol. 489] I closed up my store and on Thursday and Friday I was closed. Then when they seen that I close my store, Isaacson called me back and gave me $50 for two days what I had closed. Then I went back to Isaacson and have stayed there all the time.

Others who told me to go back to Chast were Meyer Weiss and some of the boys. I don't remember who they are. I just seen them once. Isaacson charged me at this time eight or ten cents above the market. I spoke to him about the price he was charging me. He said "I got to give away a penny to the boys." He says he has got to give away a penny or two in the Chamber of Commerce with the boys. I seen him pay money. He told me some of the names—to Louis Weidberg and Charles Mirotznik. When he mentioned their names, he says he has got to give away the money to the Chamber of Commerce; he has got to give for customers, he is holding customers."

The following testimony was given at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am still a butcher. Since 1927 I have not had any trouble of any kind. I know all the other butchers in the business. I never heard since 1927 of any of them having any trouble.

Redirect examination.

By Mr. Rice:

I had trouble in the fall of 1927, but I didn't have trouble in 1928. I have not heard of anyone having trouble in 1928. I am on the East Side Manhattan. I don't know that collections were being made throughout most of 1928. I stayed with the Pitt Street Market throughout 1928. I am through with them.

[fol. 490] I am not a market man, and therefore, any collections that were made among market men, I would not necessarily know about it, or what happened at their meetings.

Mr. Kroppy: I make the same motion to strike out the testimony of this witness on all the grounds previously urged.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 491] MAX KRADA, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I am a chicken dealer, selling slaughtered poultry in Coney Island, for about eight months. I did not accompany Mr. Mornick on any occasion when he went to New Jersey to buy poultry, but I did accompany him when he went to buy poultry from Bass in Brownsville. The first time we bought merchandise, the second time we could not get it. Herman Berman and another man, I do not know who he is, watched and followed us.

I was in business the whole year, from 1927 to 1928, the summertime. During the time I was in business in 1927, I bought poultry in Brooklyn, from Joe Reimans. The last time I bought from Harrison; also from Berman and also from Morris Gerber. That is all one market. During that time, I tried to buy from Mr. Bass a couple of times. That was the occasion on which I said we were followed.

Cross-examination.

By Mr. Jacobson:

The Witness: I had been working for Beck for six months before September. I had a store in Bensonhurst with a partner for about two months, and then we gave up the business because I had trouble with the partner. He stole from me. While I was in business for myself I was dealing with Harrison and with Gerber. They were in two different markets. I got poultry whenever I wanted in Harrison's but not in Gerber's. I was also buying from Gerber the last [fol. 492] time when there was no more corporation. Harrison sued me for the balance of a bill I owed him and I settled with him afterwards.

Mr. Kroppy: I make the same motion to strike the testimony of this witness out, on the same grounds.

The Court: The same ruling.

Mr. Kroppy: Exception.

[fol. 493] SAM RUBIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to its competency and materiality.

Direct examination:

The Witness: I am a butcher in Coney Island. Before January 1, 1928, I was located in the Bronx. Between the summer of 1927 and January, 1928, I bought from Webster Poultry Company. I went away from them and tried to buy poultry from a market on Lenox Avenue and 139th Street; I do not know the name of the market. I killed there one day, and the next morning I came there and they told me not to get any more, that I could not kill there. At that time I went down across the street from the Webster to the Butchers' Market, they called it. They told me they were sold out and they ain't got any poultry for me. The Webster was charging me at that period high prices, nine, ten and twelve cents above the market. Then I sold the store and I came to Coney Island. I first went to the Kings Poultry Market. The owners of it were Horowitz, Rosen Kassoff and Litwin. That is Mr. Kassoff standing there.

When I came down I did not know anybody, but their bookkeeper came down to my place and I told him "I do not want to start up in that market, but I know a dealer in Brownsville, a man by the name of Morris Gordon. I went to him once in a while." So this bookkeeper told me that I do not have to go to Brownsville while I am in Coney Island, that he will give me poultry for five cents a pound above the market. I killed there for a short time while [fol. 494] they charged me five cents and then they charged me nine or ten, maybe more than that; I don't know. I went away from there and started to get my poultry from Bass in Brownsville. I got it for a short time and then he didn't get any poultry, so I had to go away from there. He didn't have any fowl and I go to the Withers Street Poultry Market. I do not know the names of the owners. I killed there a little while and then one morning two boys came in there and they said the shochet started to kill before 7 o'clock. When they came in was about maybe five after seven. I didn't have a watch with me that time. One, Abe

Newman, I know, and the second one I do not know. He is sitting there (identifying the defendant Newman). They told the shochet not to kill for me. They claimed he started killing before seven. They called me up that afternoon and told me that they could not give me poultry because they did not get in the market.

Then I went to Brownsville, to Aswolinsky's market. The man I think I saw there was Morris Aswolinsky. He gave me a few fowl and he said he cannot give me any more because they will not sell him any more. I tried some more places. I do not know the name of them. Some of them said they were sold out and some of them said they can't give me. I don't remember. It is two years already.

I had a conversation with Newman only at Kings Highway Market. I came down to do killing one Thursday and I did not kill enough, so he says "Aren't you going to kill any more?" and I said "No". I said "I cannot stay because one of the workingmen once hit me and I do not want to kill there". He said "You had better do it; I will see that everything shall be O. K. with you". But still in all I went away a few days and I found out that I cannot stay [fol. 495] there and I had to go away again. He said to me that he is going to straighten it out I should not pay more than six cents a pound, but then I still paid more. He told me not to go away, that I would stay there and kill. I said I would not stay there any more; I am going to go out and get my stuff. He said "Do not look for trouble", and I should stay there. I came in there on Thursday morning and I killed there a little bit poultry. He said "What is the matter, that is all you kill on Thursday?" I said "Yes, I got to get my poultry cheaper". He said if I am going to go somewheres else, that he will stop me from killing.

Cross-examination.

By Mr. Kaufman:

The Witness: I saw Newman first in the Kings Poultry Company. I spoke to him at that time, something, friendly, but I don't remember that. About a month after I saw him in Kings Poultry, I saw him at the Withers Poultry. They came in and said to the shochet "You cannot kill before seven," and he should stop killing, and they took him off the job. They asked me what I am doing there and I said "I

am killing here." They asked me "Why do you not go back where you killed before?" and I said "I am going away now." I do not know whether it was Newman that stopped the shochet or the other man. He told me there he was going to try to fix me up at the Kings that I should not pay more than six cents a pound; he just offered to do it. I said "Go ahead," and then they sent me away to different markets. I have told everything that I had to do with Newman in connection with these transactions as far as I remember. I don't remember speaking to Kossoff, because Kossoff used to be in the market; he was buying in the West Washington Market.

[fol. 496] Mr. Kroppy: I make the same motion with regard to the testimony of this witness, on all the grounds previously stated.

The Court: The same ruling.

Mr. Kroppy: Exception.

[fol. 497] PETER BIRNBAUM, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I am in the poultry business, associated with Morris Jauvitz and Isidore Spieler, as the Junius Live Poultry Market for two years. About June, 1928, I had a conversation with Tootsie Herbert with regard to taking on union men. He says I shall take on union men or, if not, he will not let me do wholesale business. I was doing that time a wholesale business and had about ten or twelve butcher customers. I was selling a week about ten or twelve thousand pounds of poultry. I was buying my poultry at West Washington Market and the terminals of the New York Central and Pennsylvania Railroads. When Herbert asked me in the summer of 1927 to take on union men, I told him I cannot afford it, because I was a union man myself. I did not have any union men working for me at that time.

A little later, I attended a meeting of the Chamber of Commerce. Those who were present at that meeting were the supervisor, Ben Simon, and a lot of marketmen, Hirshon and Sam Sahn, Morris Gordon, Franzel. I think Dave Hirshon was chairman of the meeting. He says that we shall find out what butchers owe money of them and everybody that shall get out of the section, and that butchers that owe money, they should not try to give them some stuff because they owe a lot of money. That is why butchers owe me a [fol. 498] lot of money. At that meeting it was said that the many butchers in that section owe money and not to give them stuff. He says we shall be careful because the business is going to the ground. Butchers are taking merchandise and not paying for it. We should keep together and maintain the Chamber of Commerce, and that from coops that we take we shall pay ten cents for a coop to maintain the Chamber of Commerce. He said that retailers shall not keep any butchers because they did not know what butchers are, but the butchers shall be left for the wholesalers, and the retailers shall take care of the retail customers. He did not say who should be wholesale and who should be retail, but I had a few customers and he offered me $150 a week if I should sell the customers. It made no difference. I could sell them to anybody, to Dave Hirshon or any of the others. The customers were transferred by my telling them I have no merchandise; you have to go over to Dave Hirshon or to Morris Gordon and get merchandise there. They both told me to send my customers to them because they bought them from me and paid for them. When I say I had ten or twelve customers, I don't mean they are the same people all the time. At the time that I made this arrangement with Hirshon and Gordon, I don't remember who were my customers. Dave Hirshon and Morris Gordon said what customers were good for the money and they took them over. They paid me $150 a week for about three months in the summer of 1928. Sometimes one paid and then the other at the office of the Chamber of Commerce. After I sold these ten or twelve customers, butchers came and tried to buy from me. I did not sell them. Nothing was said to Hirshon or Gordon about not selling these other butchers.

I had some conversations with regard to taking on union [fol. 499] men. I did not take on any union men. I got poultry at West Washington market all the time. Only when I

did not want to take on any union men, then it was stopped for about three or four days. I was stopped before I started receiving this $150 a week. After I made these arrangements with Hirshon and Gordon, I did not have any trouble in getting poultry. During these three or four days that I could not get poultry, I tried to get it from the marketmen, from friends in West Washington Market and the Lackawanna Railroad in New Jersey, but the workmen did not want to load it.

I had a conversation with the defendant Dave Kaufman that I should take in union men. This was at the time when they stopped giving me the merchandise. I told him I couldn't afford it. Dave Kaufman forced me I should take the union men and to pay him $310 before the union men go to work. I mean I paid him the salaries of the union men in advance. I gave the money to Dave Kaufman himself, and I got my money back from Dave Kaufman after I agreed not to do business; that was the account I should pay before to shochtim. I then agreed not to do a wholesale business and they took them away and I got my money back. At the time this conversation with Kaufman took place, I had begun to do business with butchers.

Cross-examination.

By Mr. Sager:

The Witness: This trouble I had about the employment of union men and the conversation I had with Mr. Herbert occurred, I think, in the summertime, 1927. I had the talk with Tootsie Herbert several months before the deal with Hirshon and Gordon. I am a member of the Chamber of Commerce and was a member at the time I went up there to see Hirshon and Gordon. I did not go there to sell. When [fol. 500] I came there, they spoke and I told them I would give them up. The discussion there that night in the meeting was largely about the credit of butchers, and they were said to be very bad; it is true they are no good. That was the situation at the time I went up to the meeting of the Chamber of Commerce. Sometimes I went up there and they paid, and sometimes they did not pay. When I had to get it, I got it. Sometimes I got paid in their places also. My partners also took it. We did business as the Junius Live Poultry Market.

By Mr. Kaufman:

The Witness: Before I went into business in June, 1927, I was workman in the poultry business. I was a member of Local 167 about fifteen years, so long as the union exists. After I went into business, I did it alone. I never had any workingmen. I had some of my partners' cousins to help me out sometimes. I had two partners. One of these partners was a shochet. I knew it was against the union rules to have a boss work as a shochet in the business. I never went to the union and asked them to send me union men. Dave Kaufman saw me in West Washington Market. At the time I made a deposit of $310 with Dave Kaufman, that was to cover the salaries to be paid to the union shochet or union men. A couple of days after I made the deposit of $310, I notified the union that I was going out of the wholesale business and I would not need any union men or a union shochet. I went to the union with my lawyer and I arranged for the deposit of $310 to insure the wages of the union men who were going to work for me. I notified the union that I was going out of the wholesale business and I would not need any workingmen the next day after I de-
[fol. 501] posited the $310, and then I immediately got back my $310 after that. I did not have any employes. I knew that Dave Kaufman was treasurer of the union, and that is the reason I deposited this $310 with him. I did not have any difficulty in getting back my money.

By Mr. Sager:

The Witness: I went out and stayed out of the wholesale business as I promised, but three months after that I sold my wholesale business which I did not buy to Dave Hirshon and Morris Gordon for $150 a week and collected it for three months.

Mr. Kroppy: I make the same motion to strike out this witness' testimony on all the grounds previously urged.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 502] David Rubin, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by this witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I have been selling slaughtered poultry on the East Side for ten years. I bought poultry prior to July, 1927, all over. In August, 1927, I bought from the Pitt Street Poultry Market, Simon Lepoff, Isaac Lipkin, Sam Isaacson, Abraham Goldberg—four partners run the place.

After I started buying from the Pitt Street, I tried to buy poultry from Abe Wolf and Frankfater Brothers. Wolf refused to sell me and sent me back to Pitt Street. He said "What is the use of fooling? You know I can't give you stuff". When I went to Frankfater Bros., Jake Frankfater said the same thing, he cannot give me any stuff. Mr. Isaacson told me once that they told him in West Washington Market I got two butchers from the Bronx. He advised me I should not sell to them stuff. I told him "I do not belong to your association and I ain't got nothing to do with you, and whoever brings me any United States money, I am going to sell them".

Monday morning, a few guys came in at 7 o'clock in the morning to the Pitt Street Market and told Isaacson that he should not sell me any stuff. I was the first customer and I had my stuff killed already. So they told him I am selling two butchers from the Bronx. They did not tell me anything. They followed me in a car and when they came to my store, the two butchers were standing in their own [fol. 503] car. They went to the butchers and they started to hit them, and they cut two tires and went away. After that they told me they started something and they were going to finish. I didn't know the names of the butchers, or the men who did the beating. After that I got poultry from the Pitt Street Poultry Market.

I went to Charlie Mirotznik on Water Street. I got poultry there. Sam Lipschnitz sent me down to kill poultry there because there was not any in Pitt Street. When I got there, Charley Mirotiznik called up Pitt Street and they had a conversation. Then I started to kill stuff and I killed there maybe about twenty coops and then I did not kill more. So Charlie Mirotznik went in the office and he came

up and told me they called him up from Pitt Street, and Samuel Lipschitz told him that he should not kill any more poultry, that they had a load of poultry in there and he said that I should come back there; they stopped killing for me.

When I came in the Pitt Street Market on August 2, 1928, I found there Louis Weidberg and Charley Mirotznik, Tootsie Herbert and Charlie Herbert. There were a few other men, but I do not know who they were. Louis Weidberg asked Sam Isaacson for a thousand dollars and he refused to give it to him, and then Sam Lipschitz signed it and gave it to him. After, when Louis Weidberg went away, Sam Isaacson said "There is no use fighting against us because you never will win. You see, they come in and we have to give to them whether we like it or not". I seen every week the same thing. I don't recall how many payments Louis Weidberg got. I only know they used to give Max Rosen and Louis Spatz and Abraham Franzel from Brownsville. I spoke to Hirshon about my difficulty in [fol. 504] getting poultry. He told me he is too busy, he cannot bother himself with other people's troubles. I seen him in West Washington Market quite a few times.

Cross-examination.

By Mr. Jacobson:

The Witness: Isaacson told me I should not sell those two butchers any stuff, because they got their own troubles in the Bronx. I did not understand that Isaacson was making any threat to me or anything like that. He only advised me. Isaacson did not say he had anything to do with that matter, nor did he say that he would not sell me if I sold these butchers or anything like that. I didn't know they were coming from the Bronx. I told him they got their own union troubles in the Bronx.

I went to the Pitt Market three or four times a day every single day. I saw Isaacson pass a check for $1,000 to Weidberg. I saw Simon Lepoff and Isaac Lipschitz sign a check. I did not see the check. Mr. Isaacson told me "I just gave to Louis Weidberg a thousand dollars". I didn't hear what he said or anybody said to him. I saw Lipschitz sign the check.

At the time when Louis Weidberg used to collect the money, it is known that he used to collect for Kastein also

some money; he was a partner at the time of Julie Kastein, who was a commission merchant. Weidberg used to collect the bills for Kastein & Weidberg. On Sundays, I used to see coming in with Louis Weidberg, Max Rosen, Louis Spatz, Abraham Franzel, sometimes Charlie Mirotznik also. The only man I saw collecting was Louis Weidberg and that was during the time he was in partnership with Kastein. I never saw any check written out or handed to anybody else, for Spatz, Rosen or Franzel. Nobody ever told me they paid any money to them. I only saw them come into [fol. 505] the market on Sunday morning.

Cross-examination.

By Mr. Kaufman:

The Witness: At the time that I saw this check given to Mr. Louis Weidberg, that was the time I saw Charlie Herbert and Tootsie Herbert in the place. I found them there. Weidberg was talking to the marketmen, Simon Lepoff and Isaac Lipschitz. Tootsie Herbert and Charlie Herbert were talking to their own boys; they were not talking to the marketmen; they were not in the conversation that Weidberg had with the marketmen. They just happened to be in the market at the same time that Weidberg was.

By Mr. Jacobson:

The Witness: I told Hirshon I can't stay in that place, I would like to go in another place and they don't give me stuff. He was in West Washington Market. I just happened to meet him there. He said he couldn't mix in it.

The following testimony was given by the witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I did not buy live poultry at the West Washington Market. I sold all slaughtered poultry to butchers and at retail. I never paid any money to Louis Weidberg. These payments to Louis Weidberg were made

some time in 1927. Since 1927, I have not heard of any trouble in the poultry business, or of any payments being made by anybody. I have not had any difficulty in getting poultry since then, and I have been buying wherever I wanted to buy. Nobody has interfered with me in any way since 1927.

[fol. 506] Redirect examination.

By Mr. Rice:

When I told Mr. Kaufman that there was no trouble after 1927, I meant this trouble continued until just prior to the indictment. I do not recall that a new organization called the L. W. Credit Association was formed on the East Side in the summer of 1929. I don't know anything about that. They never bothered me then. I know after the indictment I got stuff all over.

Recross-examination.

By Mr. Kaufman:

The Witness: I do not know what that check of $1,000 from Lipschitz from Weidberg was for. I did not hear any conversation, and all I know is that Lipschitz gave Weidberg a check for a thousand dollars.

It was a year or a little less before the trial that there was no difficulty and that I was not interfered with in getting poultry. To tell you the truth, it is so long ago, I don't remember the date.

Mr. Kroppy: I make the same motion to strike out the testimony of this witness, on all the grounds previously urged.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 507] Harry Starr, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to

stipulation, subject to objection and exception as to competency and materiality:

Cross-examination:

The Witness: I am in the poultry business, selling slaughtered poultry. I am in that business the third year at 967 East 17th Street. During the summer of 1927, I began to buy from Goldstein & Gross and I bought there for two or three weeks, and then they went bankrupt or closed up. I do not know what happened there. Then I went to A. Bloom. I killed there for one day and when I came the next day, he says "Starr, I am sorry I cannot give you any poultry no more. You got to go back to Goldstein & Siegel. You belong to them and I cannot give you any poultry". I paid Goldstein & Siegel between seven and ten cents above the market. I stayed with them about six or seven months.

I went in a couple of times to Kalman Gross. He said "I haven't got any poultry for you"; nothing else. I did not try anywhere else. I continued to pay seven to ten cents to Goldstein & Siegel about eight months; then they charged me three and four cents; that is all the time since. When I could buy where I wanted, they started to charge three and four cents.

Cross-examination.

By Mr. Jacobson:

The Witness: I began to deal with Goldstein & Gross in 1927; it was during the summertime. I dealt with Gold- [fol. 508] stein & Gross two or three weeks. During that time they charged me between seven and ten cents. Then they became Goldstein & Siegel, and they continued to charge seven and ten, about eight months, seven or eight months. I think there was a little change, about a cent or two, for just a week or two. I began in the summertime, 1927, and continued with them through the winter for about nine months. Then I went and I bought of Gross or bought anywhere. I bought from Hornstein & Spatz. I got credit from Gross. I went to Gross to buy only once. He never asked me anything. He said "I haven't got any stuff for you"; that is all. It was in the summertime. I was dealing

only with Goldstein & Gross two or three weeks in August, and in September I was dealing with Goldstein & Siegel. September was just before the holidays, just the time when the demand for poultry in New York is the biggest of any part of the year in the live poultry trade. I went to Gross and he said "I haven't got any poultry".

After I stopped dealing with Goldstein & Siegel, I killed by Hornstein & Spatz and I killed by Gross and I killed by Abe Bloom, and I killed all over. That was the end of 1928. They all sold me goods. Nobody asked me for any money. When I was dealing with Goldstein & Siegel, Gross was the only other place I went to, and that was the one time I mentioned in September.

Mr. Kroppy: I move to strike out the testimony of the witness on all the grounds previously urged.

The Court: The same ruling.

Mr. Kroppy: Exception.

[fol. 509] HERBERT FRANKEL, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: Sol Frankel, Inc., of which I am president has been in the live poultry business for twenty-two years as receiver. Poultry is gathered from farms by concentrators, who in turn sell the poultry to shippers. These shippers put them in live poultry cars, and they are shipped to the Eastern market. Then they come to New York and then they go to other markets. The poultry arrives at about five terminals, in the Metropolitan District. New York Central at 60th Street, Manhattan; there is one at Weehawken and Hoboken, New Jersey; the Lackawanna at Hoboken, New Jersey, and the Central Railroad of New Jersey at Communipaw, New Jersey. These cars arrive there and they are usually consigned to one of the commission men. Our house receives poultry at all of these

railroad terminals. We in turn have our salesman and a weighmaster there. These patent cars consist of 128 steel cages known as decks. They are specially built cars for the poultry industry. When the cars arrive at their destination, the poultry is removed from these decks and placed into wooden crates. There is an unloading gang for that purpose. The unloading gang takes them and puts them into wooden crates. They they are loaded on trucks and they are sold to customers at the cars or carted to New York where they are disposed of in the City of New York. [fol. 510] The description of the arrival of poultry which I have just given is applicable to business carried on in New York. About 90 per cent of the live poultry that is sold in the City of New York, I have indicated.

Practically all of the poultry in these carload lots comes from the West, outside of the State of New York. I would say that our house sells at the railroad terminals 70 to 80 per cent. We receive the poultry on commission. The bulk of our business is commission business. We assume the accounts. Then we transmit the price of the poultry we receive to the Western shipper less our commission. When I say "we" I mean commission men generally, all the commission men so far as I know. I am acquainted with the various commission men in the West Washington Market that do business. There are about twenty. I know them all personally. When this poultry gets to New York and it is put into the coops we contract for the labor to take it out of the cars. After the poultry is out of the cars and into the coops, the trucking company does the labor. The trucking company provide us with two loaders who lift the crates from the scale on the trucks. Then when the poultry is taken to our stand at West Washington Market, we have a stand man employed by the commission merchant.

These men who do the handling of poultry belong to a union. I couldn't tell you the name, but it is the same union that is all over the market, that is the technical detail. We describe it as Tootsie's union. I know the delegate of the union, Harry Shomer.

I think he is the only delegate. I know a man by the name of Arthur Herbert. I have had talks with him about [fol. 511] his connection with the union.

The commission merchant negotiates with Mr. Herbert for their labor. As one of the commission merchants, I negotiated with him. He did not tell me what his connection with the labor union was. Then there were some other delegates there, but I don't recall their names. This was in connection with the Commission Merchants' Association of which I am president. I think I negotiated with them about a year ago last January it may have been, last January—it has been going on quite a few years. I had negotiated with him before that time, and since that time, with regard to labor matters. There is no one else with whom I talked concerning labor matters.

Most of the poultry is received at the terminal of the New York Central. About 50 per cent of the poultry I would say comes in at the New York Central. Erie would be next, the Lackawanna, the Central Railroad of New Jersey and then the Pennsylvania. I do not know whether the loaders employed by the trucking company belong to the same union as the union which I have described. 90 per cent of the live poultry coming into New York comes in this manner over the railroad in cars. The other 10 per cent comes into New York by express or truck. About 80 per cent of that 10 per cent comes in from points outside New York State. In my judgment not more than 2 per cent of the live poultry sold in New York originates within the State of New York.

Cross-examination.

By Mr. Jacobson:

The Witness: I have been president of the Commission Merchants Association of New York City for about seven years. The commission merchants are known as receivers. [fol. 512] The business generally conducted by the receivers as a group is practically the same as that which I have described. They all conduct business pretty much alike. They take the poultry from the time the shipper forwards it to the market. It comes here alive. It is limited in the district where the poultry is handled when it is alive. The persons who deal in the poultry when it is alive are licensed for that purpose, and they deal in it only in coops or crates; they don't sell it by the head. They are persons described as marketmen or as slaughterhouse men.

They do not sell it alive. They must slaughter it and sell it.

In our transactions with the shipper, confining ourselves to poultry by car lots and taking that car lot of poultry as typical of all, the shipper sends it on to us in New York. At the time he forwards that poultry to New York, the place of delivery is simply New York. It comes shipped either under a live stock contract or bill of lading. These are straight bills of lading. The shipper attaches the bill of lading to a draft and draws a draft for a considerable amount of the cost of the car. That draft is presented to the receiver, and the receiver pays the draft usually before he gets the poultry. That draft approximates the selling price of the poultry. If the market is higher the draft is greater and if the market is lower, of course, the draft is less. But the amount of the draft is generally approximately near the proceeds of the poultry for that car. The receiver, after he disposes of that poultry, renders an account to the shipper. He renders an account on the basis of market price; it may be the sale price. There are no special arrangements between the receiver and the shipper as to the price before the goods are received. You [fol. 513] have to return the market price the day the car is unloaded or you won't get any more cars. That is, without reference to the date of sale. When the selling price is returned, of course it happens to agree with the market price on the day of unloading. The receiver sometimes sends to the shipper more than the market price on the day of unloading.

If we cannot sell the poultry at the car, or we cannot sell it when it reaches our stand, it is a sort of unwritten law in our business that the shipper is entitled to the market price the day of unloading regardless of what we sell it for the next day. We get the increase if the poultry brings more than it was on the day of unloading, the next day. We remit to the shipper the market price of the poultry as of the day the poultry is unloaded. But if we do not in fact sell all of that poultry at the place where the unloading occurs and we bring it over here to New York and hold it a day or two, and the price advances, the advantage is ours. It does sometimes happen that the receiver undertakes to pay the shipper more than the market price the day of unloading, sometimes half a cent, some-

times a quarter of a cent a pound, sometimes three cents more than the market price the day of unloading. And that is without reference to the market price at which the goods are sold. There are some what we call fancy or desirable fowls which at this time of the year are known as the Indiana grade, and if the shipper sends in a carload of that grade of poultry and we are unable to sell it due to a glut in the market, we feel that he is entitled to what the poultry would have sold for if we were good enough salesmen. If we fail to sell it we feel he should be paid nevertheless. That poultry commands a higher price than ordinary poultry. [fol. 514] There are at times several prices, special prices, which the receiver must guarantee to the shipper. The shipper may demand a specific price, knowing that he has an Indiana grade, and knowing that it would sell at either two or three cents premium, he may demand that premium; otherwise he won't ship. And the receiver must guarantee to return that price, even though due to extraordinary market conditions he is obliged to sell that poultry for a great deal less. On the basis of these various price arrangements and returns from the receiver to the shipper, the receiver makes certain deductions. There is the freight, there is a coop charge, unloading, cartage and feed, and a percentage to the receiver called the commission. These deductions, however, are not made from the proceeds of the sale but are made from the price arrangements between the shipper and the receiver.

Up to the time that the poultry arrives at the terminal in or about New York there may be a shrinkage in the weight of the poultry. Those shrinkages are due to climatic conditions or the health of the bird. It is pretty hard to say. Sometimes there is a gain in weight, and when there is a gain in weight due to the time that the poultry is unloaded, the shipper receives the benefit of that gain. When there is a loss in weight, that loss is chargeable up to the time of unloading, to the shipper.

There is a man in charge of the car during transportation. He is called a car man. The shipper employs him. He is the shipper's representative. He is the man to whom I referred when I said the shipper's representative was present when weighing at the time of unloading. All gains and losses then up to the time of unloading inure to the benefit of or are charged to the shipper, as the case

[fol. 515] may be. The unloading is done at the various railroad terminals. That is, the poultry is taken out of these cars especially adaptable to the live poultry transportation and placed in wooden coops, and at the time they are placed in the wooden coops the wooden coop is weighed empty. That is called tare. And when the poultry is placed in the wooden coop from the cage it is weighed loaded. That is the gross weight. By deducting the tare weight from the gross weight, you ascertain the weight of the poultry. Then we sell it, or try to.

The shipper's representative is present at this unloading or weighing transaction. He takes the weight there, and we take weight for our own protection. We sometimes transport the poultry to our place of business from the railroad terminal. We have it sometimes a week or two. This is live poultry and must be fed and must be watered. During transportation the cost of feed and water is borne by the shipper. After the poultry reaches our place it is unloaded, and we bear the cost of feed and water. If the poultry shrinks, loses weight, after it reaches our place, the receiver stands the loss. If the poultry gains in weight after it reaches our place, we make that gain. The accounting is based on the weight at the time of unloading and the other costs and commission at the time of unloading, as the case may be. It is all based on the transaction at the time of unloading. And that is true whether we take the goods to our place or sell it from the railroad terminal. If there is a loss or damage after unloading, we bear the loss.

About half of the entire poultry that arrives and is dis-[fol. 516] posed of in the City of New York comes to the railroad terminal 60th Street and Eleventh Avenue over the New York Central Railroad and the other half is distributed among the four railroads I mentioned, the Erie, the Lackawanna, the Central and B. & O.

This freight is paid from the point of origin in the West to New York on these cars, but we unload some of it over in New Jersey as I indicated. The railroad pays the ferriage. They permit the truckmen to buy ferriage tickets, so that when a truck goes over a ferry, the truckman simply has one of the small ferry tickets. The railroad, in turn sends a check to the receiver at the end of the month for all the small tickets they receive ba-k. It is part of the railroad

tariff; that is, for each truck of chickens that comes across the ferry, the truck driver gives the railroad representative on the ferry a ticket, and at the end of the month the railroad company will redeem those tickets at their price that was paid for them, but the original freight bill will show that the car is billed to New York, and we then remit that sum that we received from the railroad company to the trucking company because they lay out the cost of those tickets.

By Mr. Jacobson:

The Witness: There are two receivers in the Bronx, City of New York, and one in Hoboken, and the rest are all in the Borough of Manhattan, City of New York. Now, of this 50 per cent or approximately 50 per cent. of the poultry that comes to the terminals in New Jersey over railroads other than the New York Central, about 25 per cent. of that is transported to the place of business of the receiver. That, added to the 50 per cent. over the New York Central makes [fol. 517] a total of 62½ per cent. that comes to the place of business of the receivers in Manhattan without having been previously sold, and is sold from there. Of the remainder 37½ per cent. of the whole, disposed of in New Jersey, the majority of it is all disposed of to buyers in New York, but we sell to Newark and to Passaic, that is, to towns in New Jersey. The persons to whom we sell are marketmen here, to whom we have referred as the slaughterhouse men. They buy upon credit. That is practically and entirely a credit business, running from ten days to two weeks. Bills are due in ten days. Substantially all of the sales made in New York are made upon the credit basis such as I have mentioned, by all of the receivers. The shipper does not know to whom we extend credit nor to whom we sell. The shipper does not know at what price we sell nor the terms of our sales. The receiver extends the credit to whom he pleases and sells at the price he pleases and to whom he pleases. The shipper has absolutely no control over it. It is a matter entirely chargeable to and up to the receiver. It is his own business.

On our sales to these marketmen or slaughterhouse men there are sometimes made what is termed in the trade allowances or rebates. It may be due to a market condition, may be due to the quality of the poultry being a little worse than what it was represented, may be due to an error in billing.

These allowances are usually made in the course of business and are borne by us. The shipper has no connection with that whatever and doesn't bear any part of it.

Some of these receivers actually buy the goods themselves, without any deductions for what is termed a commission charge or anything like that. They agree upon a [fol. 518] flat price with the shipper. Sometimes that price is the price on the track out West and sometimes it is the price delivered in New York.

In the spring of the year, from January 1st to April 1st, there is quite a large proportion of poultry that is bought, but from then on to the first of January I doubt whether there are many cars that are bought.

Some of these receivers of goods handle poultry only that way. They are virtually jobbers. When the receiver gets this poultry from any particular shipper, he mingles it with other goods when it comes to his own stand. Supposing we were receiving poultry from half a dozen shippers during one week and we brought that poultry over to our own stand in West Washington Market, we would probably mix the crates so that we would not be able to distinguish one from another. We cannot then tell whose poultry we were selling to any particular man. We sell it indiscriminately, and mingle it sometimes with our other poultry we had actually bought outright. When we sell it to these marketmen or slaughterhouse men, we sell it in coops. It is in the coops when we sell it to them after it has been unloaded. These bills of lading with the draft attached; if the account is a good one, we pay them on presentation, and sometimes we wait until we get the poultry and inspect it before we pay the draft. These are all straight bills, so that we can get the poultry without the surrender of the bill.

Live poultry is not shipped under order bills of lading any more. We can actually get the poultry before we pay for it because the railroads know these receiver concerns, and they know the goods are consigned to them. We take [fol. 519] the poultry out without the surrender of the bills of lading, but these drafts are paid to the shipper, that is, maybe all and maybe part of the purchase price. Sometimes the amount we pay the shipper exceeds the price, sometimes it is less. Those accounts of sales are adjusted from week to week. After the poultry is unloaded the receiver has got to take them and pay for them. He has no option, and

he has to settle for them according to the price on the day of unloading, less these items to which I have referred. The New Jersey Coop Company furnishes the coops.

By Mr. Kaufman:

As a matter of fact, our firm and all of the receivers are in fact buyers of the poultry that is shipped to us. We take the credit risk; that is never passed on to the shipper. If there is any loss or disruption in the property, the poultry, after it is unloaded, we take the risk of that. So that from the time the cars are unloaded and the poultry is transferred from the cars to the coop, any loss or damage is the receiver's, and any disposition that the receiver makes is the receiver's business and has no concern with the shipper.

By Mr. Shalleck:

The Witness: When we receive the poultry unloaded we then do what we see fit with it; we can sell it or give it away or fix any price on a resale, as we wish. And there is no agency that can tell us at what price we can sell that poultry once we have unloaded. We have nothing to do with the slaughtering of the chickens.

Redirect examination:

The Witness: I am acquainted with the names of the per- [fol. 520] sons in the book, Government's Exhibit 13. They are marketmen. They operate slaughterhouses and buy their poultry in West Washington Market. The list in that book is greater than the number of men here in this room. In other words, the men here in court as defendants handle about 60 per cent., 55 or 60 per cent. of the business done in West Washington Market.

The percentage of all the live poultry coming in to New York that I had in mind when I referred to commission poultry, that is, poultry sold on commission, is about 80 per cent. Our agreement with the shipper as to that 80 per cent of the poultry, the nature of our contract with him, as I understand it, is that we are to return him the market price the day of unloading regardless of sale. And it is also part of that that we deduct certain charges, among which is included a charge of usually four, but it may be three or it may be five per cent. I understand the nature

of our contract with the shipper as to the poultry that I referred to as purchased poultry to be that the shipper sets a price, either his truck or New York, and it is either bought or rejected at that price. We have no other obligation to the shipper as to the purchased poultry except to return the agreed price. As to the total poultry coming into New York, the percentage sold at the railroad terminals, I would say, is around 70 per cent.

By Mr. Kaufman:

The Witness: With respect to the 80 per cent of the poultry received by the receivers that I described in answer to Mr. Oseas' question as having been sold by us on commission, that is the poultry with respect to which we as receivers take the entire risk of loss after the time of unloading, the risk of resale, the credit risk of resale, and with [fol. 521] respect to which our obligation to the shipper is fixed and determined that we will return to the shipper the market price at the time of unloading. The only difference between what we describe as purchased poultry, which is 20 per cent of the whole, and commission poultry, is that with respect to the purchased poultry there is a price fixed before the time of delivery and with respect to the so-called commission poultry the price is not fixed until the market price is determined the day of the delivery to us. But with respect to every case the obligation is either a fixed price or the market price is fixed and determined, and in either case we take the entire risk of shrinkage, of loss and destruction, of credit and of resale.

I have known Mr. Arthur Herbert twenty years. His father worked for my father. He worked for my company for some thirty years. I have known other people who knew Arthur Herbert, and so far as I know, his reputation is all right.

I on behalf of my firm entered into a contract with Local 167, being the International Brotherhood of Chauffeurs, Teamsters, Stablemen and Helpers. I have a copy of that contract. That contract was with respect to the scale of wages to be paid by us to our employees who were engaged as helpers or loaders.

By Mr. Shalleck:

The Witness: These defendants who are marketmen purchase merchandise from us. In addition to these de-

fendants we have also sold merchandise to other persons. In other words, any person, whether he belonged to the Chamber of Commerce or not, whether wholesaler or retailer, could come to us and we would sell him."

[fol. 522] CHARLES F. HAWK, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I am in the produce commission business, specializing in live poultry. I have been engaged in that live poultry commission business a little over forty years. I am acquainted with that business. I receive each week about possibly—average about thirteen to fifteen cars the year around. Not one per cent of the poultry that I handle comes from within the State of New York. There *is* others that receive a larger percentage of their business from New York State. I would say about 85 to 90 per cent of the poultry coming into West Washington Market by freight originates outside of the State of New York. Of all the live poultry coming into the New York market, about the same proportion comes by freight. The other 10 per cent would be locally trucked in by the local trucks or express. Of the trucked in or expressed poultry, about 10 or 15 per cent comes from the State of New York. I do not think one per cent of all the poultry is local, from New York State. Most of this poultry is freight poultry and is consigned to commission men like myself. There are eighteen or twenty commission men handling poultry in West Washington Market.

On the arrival of the poultry at the terminal, we go there to receive the car. We sign up to the railroad company for [fol. 523] that delivery. Then that poultry is ours. We are responsible for it. Either by phone or personal conversation we take orders for that particular car of poultry.

We have a man, gangs of men, and trucks are there to take it out and weigh it, and deliver it subject to our orders from the office in New York. Sixty to seventy per cent of that poultry is sold directly out of the freight car. I only speak for myself. Other people might do business differently. From my forty years' experience in the business, my best judgment is that the amount of poultry sold directly from the freight cars, that is, loaded on trucks, is about 60 to 70 per cent. That is out of our hands. About 40 per cent of the poultry is trucked to West Washington Market before being sold.

Of the poultry that is truckloaded to the market, some days all of it is disposed of the same day; some days quite a lot is carried over there, as much as eight or ten cars a day. It would be impossible to dispose of it every day. If we have 250 cars and we are unloading 75 of them it would be a physical impossibility to dispose of them that day, but they will be trucked one day and put on our places and we carry them sometimes two, three or four days. Some concerns carry over every night a hundred to a hundred and fifty coops. Of all the freight poultry that comes into the New York market, about 35 to 40 per cent is unloaded at the receivers' stands in West Washington Market. That comes from the New York Central, New York, and the terminals across the river, in New Jersey, Lackawanna, Erie, and Jersey Central.

This poultry is sold by us under different arrangements with the shipper. Sometimes we buy it outright; some- [fol. 524] times with joint account with them, supposed to be first cost, but we always try to do it on a commission basis of four per cent. I cannot say what proportion of the freight poultry coming into New York is handled on a commission basis. The proportion of the freight poultry that I handle on a commission basis is about 98 per cent.

There is a standard charge of freight, cost, unloading, coops and whatever money the car man, the attendant, draws to buy his ticket back. That don't take in the drafts that the shipper has made before. All the poultry is consigned to New York, even that unloaded in New Jersey. These expenses all occur after the poultry has been unloaded; that is to say, the poultry is put in the coops after it is unloaded. The shipper stands that expense, but I understand there are several arrangements with some

people where they rebate that back on account of the competition.

When we sell this poultry, we guarantee the account and deduct four per cent. We remit to the shipper never less than we sell it and very often more. For instance, the shipper will want the top quoted market. In order to get his business we will take a chance and say all right. That is, we guarantee that we will remit to him the top price, whatever it is, if his goods warrant it. We remit the actual sales price whenever it is a matter of business policy to retain the customer, the shipper and his goods for future business. The usual remittance is the highest price. We occasionally get a premium for poultry; that is included in the highest price.

The shipper at times gives us instructions as to when to sell. They will come in two forms. One of the forms will be "Don't unload my car and sell it under such and such a price". In fact he will put a limit on it. We obey those [fol. 525] instructions. The other one is "Don't unload my car on Monday". He will specify probably the day—Tuesday or Wednesday.

As a commission man, we are practically a bank for the shipper and a collection agency. We keep him advised of market conditions daily, that is, as to poultry which we receive on commission. When poultry is purchased outright, that occurs in some cases. We do not necessarily keep him advised of market conditions. The price it is sold as a rule is made out so much at Western points. I don't know much about performing services in connection with that poultry, that is, keeping them advised of market conditions. We do very, very little of it, these outright purchases. As to general market conditions, they are supposed to be reported to the shipper, but we can only be responsible for our own receipts.

As to premium poultry, whether it is worth a premium rests between the buyer and yourself, but if you have told the shipper you can get it for him, you have to return it whether you get it or not. When we get the poultry to New York, if we see it is extra quality, we go ahead and get a premium, and when we do get it, we send him that.

The market price of this poultry varies from day to day. There are three or four different market prices at this time of the year. I said it was sold at the market price, the top market price, according to the quality of the goods, but we

cannot judge that quality until this 35 or 40 per cent comes over there, and we look at it ourselves. We can only take the man's report on it. Assuming that I have sold out all my poultry at 12 or 1 o'clock and thereafter I discover that poultry has been sold at a higher price than I sold it for, [fol. 526] I will try and remit my own sales. The next day I can get a call that the other fellow sold for more money and asking me to do the same, to remit the difference. If he is a real good shipper, it might be wise to do it. If he is an occasional shipper, why we don't do it.

After the car gets to the terminal, the buyers never select the poultry before it has been taken out of the cars. We start to get orders as early as we can in the morning. Those sales are made subject to inspection. In regular business that cannot be considered a sale. Probably 50 per cent or less of the poultry is ordered in this way, subject to inspection.

That 50 per cent of the poultry is ordered from the cars before inspection, only applies to my own cars. Of the poultry that we receive, we get all we can out of our hands on the same day, possibly all of it that day; perhaps not all, perhaps half of it, perhaps a third of it left. It is pretty hard to estimate that because there are so many changes there. There are changes every day; there is no day hardly alike; there is no week hardly alike. It is our policy to get it moved just as quickly as possible. The speed with which this poultry moves out of our hands depends on market conditions, supply and demand. If there should be a slight shortage, it moves very rapidly then.

Cross-examination.

By Mr. Jacobson:

The Witness: The poultry is described in the trade as of two kinds, freight and express, and includes the product which comes on freight cars from a distance, and a regular freight carriage is charged by the carriers, and express goods that come from nearby localities by express cars [fol. 527] or by truck. The portion received by freight is about 85 or 90 per cent of the whole; the other 10 or 15 per cent are known as express goods. A very small part of it originates from within the State of New York. Freight goods come in over the New York Central, Lacka-

wanna, Erie, Pennsylvania, New Jersey Central. Some cars come in over the B. & O. very few. The average receipts a week are normally about 200 cars. This has been the normal consumption for New York, except this past year it has been a little low. During the period beginning say the 1st of August, 1927 to September 1, 1928, it would average around 200. There was no lessening of supply during the period from August 1927 to September 27, 1928, as compared with the previous years.

As to the goods which come over the railroads, more than half of it comes over the New York Central, going back to when the New York Central started in receiving; I should judge that is two or more years ago. Their terminal is 60th Street and Eleventh Avenue, Manhattan, New York City. The terminals of the other railroads are in New Jersey. Of this 50 or more per cent. of the entire receipts that come in over the New York Central, 60 or 65 per cent. of those goods are sold at the railroad terminal. The balance of it is carted by truck to West Washington Market and sold at the receivers' stands in West Washington Market. Each of those receivers or commission merchants are licensed. They handle goods by the carload. They cannot sell except by the car and they cannot sell except alive.

As to goods which come over the Jersey railroads, that is, the Central Railroad of New Jersey, the B. & O., and [fol. 528] the Pennsylvania, I would say about 10 per cent. is sold at the terminals to the people that live in Jersey and the balance is sold through New York. We don't sell any of that poultry at the railroad terminals; we sell through our office. On the average, about 25 or 30 per cent. are delivered at the terminals to New York people. The balance is trucked over to the receivers' place in New York and transferred to their own trucks and then sold from the receivers' place of business. That is true as to the Pennsylvania, B. & O. and Jersey Central, the Erie and Lackawanna—they come by way of Buffalo, through New York State and New Jersey; that is their last terminal; but they are billed to New York. All poultry dealt in by the New York receivers is billed to New York. These railroads that have terminals in New Jersey have no terminals in New York to unload live poultry.

Some poultry is shipped on order bills of lading. We get it every week. That is where the shipper ships to himself.

If it is necessary, you pay the draft attached to the bill of lading before the railroad will deliver you that poultry. There are times when a shipper ships poultry without having in mind the commission merchants to whom it is to be delivered. Sometimes he waits until he sees who will give him the best deal, and in those instances he ships to his order. He selects the merchant while it is in transit. These are shipments under order bills.

Where the receiver is known to the shipper, the poultry is shipped direct, consigned to the receiver. On straight bills of lading it is consigned in that fashion. Sometimes [fol. 529] the drafts are mailed and lots of drafts come in without any bill of lading attached. Sometimes a bill of lading comes in without a draft; that is with shippers we have done business with for a great many years and who know we are going to send them a check. Even in those instances we pay four or five days in advance before the goods arrive. Those payments are on account of the entire price, an advance on the gross. When the draft comes in, sometimes it is attached to the bill of lading and in order to get the bill of lading we must pay that draft. That only applies to an order bill of lading. As to the straight bill of lading, we get the goods without a bill of lading. On an order bill we must deliver the bill in order to get the goods. On a straight bill of lading we get the goods without surrendering a bill of lading.

The term "commission merchant" has been applied there in that market ever since it existed. Up to fifteen or sixteen years ago there were two distinct branches in West Washington Market handling the live poultry trade. One was called receiver, supposed to be a commission merchant, and the others jobbers. The receivers who call themselves commission merchants received the poultry in carload lots and sold it to the jobbers in car lots, and the jobbers then sold it to the slaughterhouse men by the crate. That line of demarcation was eradicated about 1911, and since that time all of the receivers in West Washington Market have been receiving the goods in car lots and selling them to the slaughterhouse men by the crate and they call themselves commission merchants. They all do their business the same way, buying and selling on joint account and on commission. Some of those concerns in West Washington Market

[fol. 530] today and during the period two years ago, did not do business on a so-called commission basis at all; they bought the goods on flat prices on track West, or on track delivered in New York. It is all a matter of contract between the purchasers and the shipper. There is no written contract. Only the telegrams.

The per pound may not be specified but it is fixed for the price to apply say on a particular day on which poultry is bought. For instance, take St. Joe, Missouri, that is a well known shipping station. Using that as an illustration, take one of the men in West Washington Market, New York, who buys a car, St. Joe track, that is shipper's track, he orders it delivered at the railroad there, and all subsequent charges are assumed by the buyer. If he sells it delivered in New York, the buyer pays the charges up to New York. The shipper puts the feed in and you pay the carman's expenses unless you have a specified deal. That is all a matter of contract between us and the shipper of the poultry.

On the other hand, these commission transactions are matters of custom and practice in the trade, modified by a special agreement in some instances. The shipper sends to the receiver in New York, he consigns to him at New York, and at the time he either sends a bill of lading with draft attached or bill of lading without draft attached or a draft without bill of lading. The receiver always gets a bill the following day, by the pound, and the different charges that he charges against him. The shipper pays all charges, what we call standard charges. They have carmen in charge of the car who feed and water the poultry. Then [fol. 531] the feed necessary, and cartage after the poultry has arrived here, the shipper pays all that. After the poultry reaches the terminal and is taken out of the car it is put in coops. When it is taken out of the cars and put into coops, that is called unloading. The shipper pays for that and for the crates. Up to that time all the charges are paid by the shipper. Those may be advanced by the receiver, but charged against the shipper when the account is finally rendered to him.

During the transit there is what is called shrinkage. Up to the time of unloading the shipper stands the loss of shrinkage. If there is a gain in it, he gets the benefit of that. Shrinkage includes loss of weight, natural loss of

weight, and also death from any cause whatsoever. The receiver then gets it in the crates from the railroad terminal. From that time on, the receiver stands all the expenses with reference to this poultry. The receiver pays the cost of handling and selling over at the market, and if there is loss or damage, loss through fire or any other cause, he stands that after they are unloaded, without recourse to the shipper.

We sell poultry to anyone that will buy it; there is no specified person. The receiver selects the buyer. The shipper has nothing to say about it. The shipper does not have anything to say about the terms upon which we are willing to sell that poultry; he has no control over it. I have never hea-d of a man, after poultry has been unloaded by the receiver, giving back to the shipper poultry because he did not like the transaction or did not like the poultry or something. I have never heard of a shipper demanding it back because he did not like the way the receiver handled the business.

[fol. 532] The cartage from the terminal in New Jersey to the receiver's place of business in New York is paid by the shipper; that includes delivery up to the receiver's place of business. When poultry is taken to the West Washington Market and there unloaded from the trucking company to the buyer's truck, it is the shipper who pays the charge up to the point where the buyer gets possession of it in the West Washington Market. The shipper stands all charges up to delivery at our place of business. When we sell to buyers at the railroad terminal, we charge cartage back to our place of business to the shipper. We collect it and pay the trucking company. The slaughterhouse man or the marketman pays the cartage up to his place of business. If delivery is taken by the buyer at the railroad terminal, I pay the trucking company, but the buyer gets no direct benefit.

The Court:

Q. That is, the trucking company gets paid whether he trucks the chickens from New Jersey to your place of business or not; he gets it?

A. He has the equipment there, ready to cart every coop.

By Mr. Jacobson:

The Witness: The trucking company is benefited by not having to transport the poultry from there over to our place of business. The trucking company does not make an allowance of that cartage to the marketman or slaughterhouse man. He charges the slaughterhouse man just the same and that is an item that the shipper pays.

Our commission deduction is now standardized wherever it can be at the standard rate of four per cent. That is not the percentage that we do get. We have to remit to the shipper very often a little bit of that back. We account or [fol. 533] return to the shipper on the basis of the first day following the day of unloading. If a carload of poultry comes in on Monday, there is a chance that the price that that car is to yield will not be fixed until we have determined the number of cars of poultry that come to New York in that week; but we have to know pretty well what the receipts will be for the week before the market price can be established. The shipper who sends the poultry that arrives here on Monday is likely to have the price at which that poultry is transported fixed by the cars of poultry which arrive Tuesday or Wednesday; that is because the buyers will not pay more than other buyers will pay for similar kinds of poultry. It would result in a condition like this: Where we make a flat price for the benefit of the marketmen or slaughterhouse men, and then later somebody will pay them a little bit less, the first man will insist upon a reduction even though we had an agreement with him as to price; he would not pay more than other people would. Butchers and chicken dealers do the same thing. The shippers, on the other hand, get the highest price.

If we have to carry poultry over to Thursday or Friday, or even into the following week, we account to the shipper as of the unloading day after the price is established. The nearest price to the time of unloading is the one which is made the basis between the shipper and the receiver. It does not make any difference when the goods are sold. I can carry them for five days, and if it is worth 10 cents a pound less I have got to lose it. But aside from the expense that we have to bear, any gain in price helps us. In all transactions between the receiver and the shipper, the unloading becomes the line of demarcation. We render an [fol. 534] account to the shipper at the end of each week.

We tell him the price or terms at which we sold the goods. In our account of sale we just state the price, and that price is the market price obtainable at the unloading.

There are different grades of poultry, about half and half, six months fowl and six months chickens. There are different prices for fowl. Chickens are largely called spring chickens. Fowl are older hens. At times the chickens predominate, the number of chickens is greater than that of fowl. At other times, fowl predominates, and the price of fowl is more than that of chickens. Leghorns are a cheaper grade, and Plymouth Rock a higher grade of fowl. At different times there are different prices as to each kind. The place of shipment affects the price. The section of the country from where the fowl originates is pretty well known to all people engaged in the trade and they know where good fowl comes from and where the poorer class of poultry comes from. The better poultry comes from the northern part of the Middle West and the poorest grades are from the South at certain times of the year. There are different prices and quotations for those different sections. The price of Western poultry is more than the price of Southern poultry, and for Southern poultry the shipper may want the highest price for Western poultry on the day of unloading; it does not make any difference what we sell them for. That is all competition.

It is nothing unusual for poultry of one kind to sell for three to five cents a pound less or more than the poultry of any other kind. Of course, the increase in that requires that the price to the slaughterhouse man and the chicken [fol. 535] dealer be accordingly increased. In the same block it may be that someone will buy three or four or five cents cheaper, and he will come and speak and tell me that so and so got cheaper than he got. I am familiar with the conditions here, and it is necessary for a man in that line of business to keep in touch with what his customers are paying for account credits.

Live poultry being a highly perishable product, everybody that is in the business is anxious to move it, and most of the poultry sold is upon the date of unloading. It therefore happens that the selling price may be the same as the price on the day of unloading. Even after the years I have had to pay the top price to the shipper under circumstances which I have testified to, I find my business profitable if I

do not have any bad debts. I find that it is possible to do business in any event. Bad debts have not been so much as the shippers' item of overdraft, the last few years, which we have to stand. I have heard of the Greater New York Live Poultry Chamber of Commerce.

Redirect examination:

The Witness: Buyers do not go to New Jersey to load their trucks at the cars as frequently as they used to because of the license requirement and the necessity of having a New Jersey license. That condition has been in force since the New York Central first started in to receive poultry in New York; I judge that was three years or more. Instead of going to New Jersey to load up their trucks at the cars they wait until the trucking company brings it over to the West Washington Market, and load up there on their own trucks. They buy it and then they load it up at the market. [fol. 536] They do not buy it until it is on their own trucks; it is not considered sold until it is on their own trucks. They order it over there and then it is brought here—they *over* it over there at the particular car, but it is not considered sold until it is on their truck. If they intend to take it, then it is delivered at West Washington Market, transferred in the street or any place from one truck to another.

The shipper exercises control over the poultry which he tells us to sell at a certain price or unload at a certain date; we must obey his instructions. He is speculating; that is what we call it. In that case he takes a chance on what the price is, no matter when we sell it. In such a case he sustains the shrinkage.

Conditions in the poultry business, the usual course of business, have changed very much during the past five or six years. They changed in this way, that the remuneration of four per cent. does not amount only to a term, through competition. There are receivers who have come into the business where they handle for three per cent, and I have heard of instances as low as two per cent. All of the poultry which I receive is on this commission basis.

Recross-examination.

By Mr. Jacobson:

If there is a shortage in supplies, my customer comes to me and tells me how many coops of poultry he wants. Those

are orders for goods that are in transit. I get from him a designation of what his requirements are. He does not actually take any goods or agree to take any; he merely tells me what his needs are. That is what I mean by orders which I explained.

[fol. 537] As far as the shipper's instructions as to price are concerned, on the day of unloading, if the shipper tells me to withhold poultry, to withhold unloading, I withhold unloading in accordance with his instructions. The unloading day is the day upon which I have instructions.

If my shipper tells me not to unload say for three days, I unload three days later and if I cannot sell the poultry, my shipper cannot tell me at what price to sell it after I unload. Once it is unloaded he has no further control in the matter or the right to give instructions.

[fol. 538] MAX FELD, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I am in the butcher business eight years. During the summer of 1927, I bought from Isidore Frank. I tried to buy at that time from Tremont Live Poultry; then after I went out of New York to Englewood, New Jersey. When I went to the Tremont Live Poultry he said he is sorry, he cannot give me any stuff. They told me if they give me stuff they cannot get any stuff downtown at West Washington Market, I think. I did not try any other markets in New York. I was trying Englewood, New Jersey. I do not know the name of the market. I went to Englewood and I said, "I will pay you cash."

Q. Did you get any poultry there?
A. I couldn't get any.
Q. Did they give you any reason?
A. The same reason, they wouldn't get stuff downtown.

Mr. Jacobson: We object to the conversation. It was with some unnamed person, not even in the City of New York, a person not named in the indictment——

The Court: Overruled.

Mr. Jacobson: Exception.

I also tried in Flushing, Long Island; I cannot exactly remember the name. There is only one there. I also wanted [fol. 539] to pay the man cash. He said people were here last night and told him distinctly not to sell any stuff to butchers, and I had to turn back. I offered to pay cash in Englewood. I tried 108th Street and First Avenue. The market is not in existence now. It was Globe Live Poultry. I got poultry there about six weeks, then the chicken association broke that open and I went back to Isidore Frank and I got stuff. Those are the only two places I was trying. I was followed on 116th Street one time. I don't see them. There were two fellows, but I don't see them here.

The following testimony was given by the witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am still a butcher dealing in killed poultry. I never bought in the Washington Market. I bought from the marketmen. In the summer of 1927, I had some difficulty in getting poultry which lasted about six weeks. At the end of those six weeks, I did not have any further difficulty. I did not have any difficulty about getting poultry as soon as the association broke up. I cannot tell you dates. The association broke up a year and a half before the criminal trial. Since the association broke up I haven't heard of any one else having difficulty in buying poultry.

Redirect examination.

By Mr. Rice:

The approximate time when I went to Englewood, New Jersey, was in September 1927 or possibly 1928. It was the same year when they started the association. I had this difficulty in getting poultry in Englewood, New Jersey.

After that I went back to I. Frank. I had to go over there [fol. 540] if I could not get it anywhere else. Then I went to Flushing, Long Island. After I tried to buy poultry in Flushing, I went back to I. Frank. I had to go back. Finally, I stayed with I. Frank because the association broke up. After the six weeks, while I had trouble, I bought by I. Frank all the time, until the association broke up. I can buy poultry wherever I want to now and have been able to since the association broke up.

Mr. Kroppy: I want to make a motion to strike out this witness' testimony on the grounds previously urged.

The Court: Motion denied.

Mr. Kroppy: Exception.

[fol. 541] MEYER STEINBERG, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I sell slaughtered poultry. I have been in this business fifteen years. Between the summer of 1927 and the summer of 1928 I bought from the Tremont Live Poultry Company. I also tried to buy from Schonzeit. They told me I cannot get any poultry because they will stop him off the poultry. I also tried by Joe Mines, operating 75th Street Live Poultry Market. There I killed a couple of times until I called him up again and he told me I can get no more poultry. I said "Why?" He said "They stopped me off the poultry". I did not try anywhere else. I know Joe Mast. He told me that I should not run around and I should stay in my place and kill the poultry. I told him, "I can't stay. I want to make a living". So I said "I used to pay before three cents above the market, now I got to pay six cents." So he told me we got expenses. So I told him "You don't have to keep no gangsters to have such expenses". So he told me they are fine people and want to make a living. I attended a meeting of Bronx butchers during the summer of 1928. Some marketmen were present, Pop Sokoloff, Izzy Frank, Louis Spatz, and

Sam Goldstein. The meeting was, I think, in August. We asked for open doors, so Pop Sokoloff said "We can't give you open doors now. We will have a meeting and will let [fol. 542] you know about it". Sam Weiner did the talking for the butchers. About a week after that I was buying wherever I wanted to. During the period between the summer of 1927 and the summer of 1928 I used to pay five cents for fowl, seven cents for spring. After this meeting I paid three cents for fowl, four cents for spring.

The following testimony was given by the witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I still have that retail store. Some time in the early part of 1928, there was a meeting of the market men and the chicken retailers together, asking the marketmen for open doors. A week after this meeting, I was able to buy poultry cheaper, and wherever I wanted to get it. Since that time I have had no difficulty in buying poultry anywhere and at any price I wanted to buy it for. I do not know of any trouble during the last three or four years. I don't know of any other meetings between the market men and the chicken men after this meeting that I have just testified about. That meeting was in September of 1928. Since that time I know of no difficulty of any kind in the poultry business.

Mr. Kroppy: I move to strike out the testimony of this witness on the same grounds as previously urged.

The Court: Motion denied.

Mr. Kroppy: Exception.

[fol. 543] David Glassner, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I sell slaughtered poultry on the East Side about twelve years. During the summer of 1927 I bought

from Nierenberg and continued about a year. During that period I tried to buy from Chast. In July or August, 1927, I went over to Mendel Chast to buy my poultry and got poultry there. The next day I went back again and I met three boys outside the door of Chast's place, and they asked me my number, if my number was 23 Rutgers and I said yes. So they told me "You belong to Nierenberg and you got to buy poultry from Nierenberg". I did not listen then and I walked into the market. So they went after me and they went over to Chast and told him that he should not sell this man poultry because he does not belong there. Mr. Chast said "I will sell him poultry", and the boys said there will be a murder case if you sell him poultry. I seen Mr. Chast getting ready to put up a fight, and I walked out. They went after me and they got me by the collar and they put me in a car and brought me back to Nierenberg. I never seen them before.

(Witness leaves stand and examines defendants.)

I do not see any of them people.

I bought my poultry there of Nierenberg and the next morning I went back again to Chast. I told Nierenberg "I will go to the District Attorney". He answered me, he has him in his pocket. The next day I went back again to Mr. [fol. 544] Chast. That same thing—when I went to the market I met the three boys and they put me in the car and they took me by the collar and they brought me back to Nierenberg in their machine. After, I stayed by Nierenberg until he closed up his place and then I went back to Chast. Nierenberg told me to go back to Chast. When I went back to Chast he charged me about eight cents above the market. At the time these people took me by the collar and brought me back to Nierenberg, Chast was charging me about four cents above the market. I told Chast "What is the idea of charging so much?" He told me he is forced to give a certain amount to Nierenberg, but at the end of the week he took off my bill something like $15.

Cross-examination.

By Mr. Sager:

The Witness: Mr. Chast was willing to sell me but these strange men prevented him, and when I had some dispute

about the price, he said that on this occasion he took it off the bill at the end of the week. He didn't say he ever paid Nierenberg or anybody. He told me that he has got to give a certain amount to Nierenberg because Nierenberg closed his place up and he had some of his trade; that was after Nierenberg had closed his place up.

The following testimony was given by the witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am still in the chicken business. I do not buy in the West Washington market. I buy from the market men, slaughtered poultry. My experiences with [fol. 545] Mr. Chast and Nierenberg were about 1928 or 1929 when that corporation was. 1928 or 1929, I really don't remember. I think it was in 1929, about three or four months before the criminal trial. To tell you the truth, I really don't remember how long it was. I imagine it was three or four months. I could not tell you. I don't remember whether it was 1929 or 1928. I don't remember what year it was. I don't keep a record of that. All that I know is that some year I had some difficulty. I don't remember whether that year is 1927 or 1928 or 1929.

Q. Do you remember when the association was formed, the Chamber of Commerce?

A. I remember when it was formed, but I don't remember what year or month.

Q. I will tell you when it was formed. The evidence here shows that the Chamber of Commerce started to function in July of 1927.

A. Yes.

Q. Was it during that year that you had your difficulty?

A. Yes.

Mr. Kroppy: I move to strike out this testimony on the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 546] HARRY GLASSBERG, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I have been in the live poultry business last eighteen years. I was a member of the Chamber of Commerce. My firm joined in 1927. I cannot remember the month. I was only down there once. I attended a meeting of the poultry dealers of my borough during the summer of 1927 in 116th Street near Lexington Avenue. The president was Willie Simon. Those present were marketmen and members of the association of Yorkville and Harlem—members—Schiller and Josselson, Joe Mintz, Kaplan of Kaplan & Gold, Max Cohen's partner, Goodman Levy, Max and Samuel ——, Al Wickler, Max Romano, Mr. Kaye from the Columbia Poultry Company, Karp of Karp & Jaffe, Schiller of Schiller & Levy, Jake Reisner, Max Wolas, Rosen from Rosen & Wilkin, Louis Cohen, and some one from the Ideal Live Poultry Market, I think Harry Simon and Max Cohen.

Everybody had the floor. They were trying to organize a credit association and get their goods paid for from creditors. They said not to grab any customers, one from another; they just said to stick to their own trade; not to take anybody's else; but just to keep their own customers. They said that certain customers belonged to certain markets in the section where they are. I had customers on the [fol. 547] West Side and I am operating on the East Side. They took one away from me; they say I don't have to go on the West Side when I can operate on the East Side; they said I can save myself trouble of delivering to the West Side. That customer on the West Side, I gave him up. Before I went to the meeting I had about six or eight customers. I believe I gave up about two.

The presiding officer said that everybody will have to give up a cent a pound in order to hold up the credit of the association. I did not pay any money at that meeting. I paid

a cent a pound afterwards. I paid it to Louis Cohen (not a defendant), and Max Wolas, Jack Reisner and Morris Josselson. They came mostly together. I paid from $80 down to $50 or $40 per week for about six months. We agreed on a definite amount, $50. I refused to pay these people at a certain time in the fall of 1927. I spoke to Louis Cohen and Wolas, to the people who came around collecting, that we cannot pay that much. They said "You got to pay a cent a pound." I did not pay it for about five or six weeks. At the end of five or six weeks or during that time, I was without poultry a day or two; then we got poultry again. Before that, some of them came around and said if I will pay my dues, what I owe, they will let me load again. They were not the same people who had been collecting money from me before. When they came around and told me they would let me load if I paid up, I said I cannot pay it, I don't make enough to pay it. Later on, I did pay to somebody there to collect it; the names I was told, but who they were I don't know. When they came in, they said why I don't pay up these few dollars I owe, why I em- [fol. 548] ploy my shochet at the wholesale. It is a retail market and I am not supposed to employ him at the early market, and why don't I straighten out and pay these few dollars that I owe to the association. I paid them $150 in cash. When I paid them the money, they said nothing. I got my stuff again. During this time my shochet was taken out of my place for about three days. I haven't seen the people who took him off.

At these meetings they did not say what they were going to do with this cent a pound. I did not ask any one. Nothing was said at these meetings about prices; we kept on the regular prices.

Cross-examination.

By Mr. Sager:

The Witness: This was an association of the Harlem and Yorkville marketmen and we had a meeting up in that section. That meeting was composed of various marketmen in that section whose names I have mentioned, and some others that I do not recall. It was strictly a meeting of marketmen in that section to improve our credit situation. At that time we discussed among ourselves the prospects

of our business and among other things it was advised that we not sell out of our neighborhood. I gave up voluntarily two of my customers, not to anybody in particular. If I am not mistaken, our organization had the name Harlem & Yorkville Live Poultry Credit Association. We started paying a cent a pound some time during the summer of 1927, after that meeting; and then, later on, in the spring of 1928, I paid $50 a week regularly, instead of a cent a pound. I continued to pay that until the organization ceased. During two or three days I had no poultry.

[fol. 549] By Mr. Kaufman:

The Witness: I had difficulty with the teamsters' union and the shochets' union while I was making the payments to the association. The three days that I did not have poultry in my store was during the time while I was making payments to Louis Cohen or the other people that I mentioned.

Redirect examination:

The Witness: It was when I stopped paying that I didn't get any poultry. It is considered a small market. They wanted the shochet to come in at the retail hour. I wanted him to come in at the wholesale hour so I can give my customers the service in time. I believe that was because they took him off.

The following testimony was given by the witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am still a market man. I had some difficulty with the union between 1927 and 1928. I have not had any difficulty since that time. I do not know of any organization at the present time in the live poultry business. I have no difficulty in connection with the purchasing of poultry at the present time.

Cross-examination.

By Mr. Kroppy:

The Witness: Since 1928, there have not been any more collections made by the market men in the amount of one

cent a pound. Since that time, I have been able to buy poultry wherever I pleased, and that is true of all the market men in that section. I have been able to sell to [fol. 550] anybody I please.

Redirect examination.

By Mr. Rice:

I am at present a member of the Harlem & Bronx Board of Trade. I do not pay dues to that organization. I paid an initiation fee of $50 to the organization. At the meeting, I paid $50. There was a meeting of this association about four or five weeks ago.

I think it is a Credit Association. All of the market men in Yorkville, Harlem, Bronx, are members of it. No others. We just commenced to function about four weeks ago. At that meeting it was formed a Credit Association.

All the market men agreed that they would not sell poultry to a man who does not wish to pay a bill to the last market man. I adhered to that agreement. If a butcher or a retail poultry dealer comes to my market and he has not paid his bill to another market, I am supposed to sell him but for cash. If I don't want to give him any credit, I wouldn't give him any. If I don't know the man is good for the money, I won't give him stuff, if I know he is good, if he really wants to buy I will give him stuff and he should pay the bill, I will give him stuff. If he does not present a paid-up bill from the other market man, let him pay cash.

By the Court:

Q. In other words, you won't give him credit unless he shows the——

A. Unless I know that my money is good.

Mr. Kroppy: I move to strike out his testimony on all the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 551] Jacob Seiden, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The following testimony given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I have sold slaughtered poultry over twenty years on the East Side. Prior to August, 1927, I bought in a few markets on the East Side, but most of the time from Sahn and Wolf. On one Sunday morning in August, 1927, I came in to Sahn and Wolf, and I marked my poultry and I have to slaughter it. That was around 7 o'clock. The shochet was ready to kill the poultry, but Mr. Wolf calls me over and says, "Seiden, I am sorry, I cannot give you any poultry today; you have to go to Nierenberg to buy your poultry". I said, "Why this? Why didn't you tell me that an hour ago, when I could get my poultry. Now it is 7 o'clock. If I go to Nierenberg, I think I will go home probably without poultry." He told me "I am very sorry I cannot give you any poultry today". But I insisted that it was late "Now give me my poultry today and I will see during the day what I shall do tomorrow". He says "Nothing doing, I am not going to give you any poultry today if you paid a dollar a pound". After he called me aside and told me "I fought for you until 12 and 1 o'clock last night, but they wouldn't let me and I cannot give you any poultry, and that is all there is to it." The same day my brother-in-law was there, he also buys poultry of him, so I tell him, "Now you buy a little more poultry today". Wolf told me that it is no use for [fol. 552] me trying to buy anything, I must go to Nierenberg and I will not get any poultry anywheres else.

During the same week, my neighbors helped me out. This one gave me some and this one helped me out. Until Thursday, a marketman by the name of Altman met me in the Street and told me he was willing to sell me poultry.

Mr. Sager: We object to that.

Mr. Oseas: It is quite competent.

The Witness: I did not buy any place. But I had been in the market and I could not find anybody who wanted to sell any poultry. I went to this marketman and I bought from him poultry on Thursday and Friday and Friday I

told him, I said "Will I get poultry for next week?" And he says "Positively".

Mr. Sager: I move to strike that oue.

The Court: This is one of the marketmen, isn't it?

Mr. Oseas: Not a defendant; one of the marketmen from whom he could buy poultry.

Mr. Sager: Exception on the ground that it is not with any of the defendants.

The Witness: He promised me positively that I will have no trouble about getting my poultry. Sunday morning I go over there for my poultry, and this same Altman says "Seiden, I am sorry, but I had an accident by my partner, Mr. Belinsky," I said "What happened?" And he said "Some men came over and broke this Belinsky"——

Mr. Sager: We object to that.

Q. Did he give you any poultry after that?

A. No, sir.

Q. What did you do next?

A. What happened to the marketman?

Q. Never mind what the marketman told you. What happened? Wait a minute; just tell us what the marketman told you?

A. He told me——

Mr. Sager: I object to that.

Mr. Oseas: I offer it as being a conversation with a person from whom he attempted to buy poultry, explaining the motives of that person in refusing to sell him. It is absolutely competent.

[fol. 553] Mr. Kaufman: This is not a defendant?

Mr. Oseas: Not a defendant.

The Court: I will take it.

Mr. Kaufman: Exception.

Mr. Oseas: Not as proof of the fact but merely as proof of the motives.

Q. Go ahead; what did Altman state?

Mr. Kaufman: If it is not a proof of the fact, it is prejudicial to the defendants.

The Court: It is proof of the condition, as I understand it, which existed in the market at that time.

Mr. Kaufman: Exception.

The Court: As to whether there was a free and open market.

Mr. Kaufman: Not that conversation why he could not get it.

The Court: Yes, he is telling us what attempts he made to get it. It is some evidence as to why he couldn't get it.

Mr. Kaufman: Exception.

The Witness: I started to get from Wolf again. I was trying to go to Frankfater Bros. J. Frankfater and Hymie Frankfater. They told me they could not give me any poultry before they spoke to the big boss, by the name of Benjamin Simon. I went to Benjamin Simon and asked him to let me go elsewhere to buy my poultry. He asked me the reason why I wanted to leave this market. So I explained to him, I have to pay more for my poultry and not to get the poultry that I need for the price. Consequently, I cannot sell my poultry. He says, I should go home, and he will see that I should get better treatment. A few weeks passed and I seen it is no relief for me, so I had to go again to Benjamin Simon. That was four or five weeks before our Easter. Benjamin Simon told me he cannot do anything for me until after Easter. I had to wait until after Easter and then I [fol. 554] went again to Benjamin Simon. He asked me where I wish to buy my poultry. I told him "I think I am old enough to go wherever I please, because I am doing business in my name, and what is the use for me to tell you, but it is my own will, because anyone else will do the same ~~to me~~ and this I ~~don't~~ want. I want to go wherever I please". ~~He~~ says "This you cannot have". I insisted that if I cannot get any transfer to go elsewhere to buy my poultry, I am going to close up my store.

When I talked to Benjamin Simon, Louis Weidberg was present. I told Weidberg "It is no use for me to stay there because we cannot buy equal with these others" I says, "Why don't you help me so I will be able to go away from them". So Louis Weidberg helped me, and I went in and Benjamin Simon allowed me to go to Frankfater Bros. When I spoke to Louis Weidberg there was nobody else present. I stayed by Frankfater Bros. a few weeks and suddenly one day he raised me about two or three cents more. So I asked Jake what is the reason; I said, "You agreed to sell me poultry at a certain price". He says "Why, I cannot answer this", he says, "I am compelled to do it". Then I met P. Lipschitz in West Washington

Market and asked him whether I could not get him to sell me poultry. He told me "I would be glad to sell you". He has the Pitt Street Poultry Market. Sam Isaacson is one of the partners. The third one I do not know. I did not have any conversation with any of the Pitt Street people.

I was paying to Sahn & Wolf, before I left them, two or three cents above the quotation market, and then the price was five, six, seven and eight cents. Sahn of Sahn & Wolf [fol. 555] is not the defendant Samuel Sahn. Wolf told me not to sell any butchers.

Cross-examination.

By Mr. Hallheimer:

The Witness: I went to see Mr. Benjamin Simon, all told, about six or seven times, maybe ten; I can't recall exactly. I saw Abe Wolf and he told me to go and see Mr. Benjamin Simon. I went there myself. The second time I went myself, nobody told me. After I saw Simon, I went back to Wolf. After I went back to Mr. Wolf, I went back to Simon again about two weeks later; I did not have anybody with me when I went to see him. When I was up to see Mr. Simon, I told him Mr. Wolf was not giving me the proper kind of poultry; that was one of the reasons I wanted to change. I have been in the chicken business for over twenty years. I did not know at that time that the various marketmen were only carrying sufficient poultry to supply the needs of their customers.

Mr. Kaufman: I move to strike out the testimony of this witness on all the grounds previously urged.

The Court: Denied.

Mr. Kaufman: Exception.

[fol. 556] Morris Bloom, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by this witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I am in the live poultry business in the Bronx. Benjamin Panish and myself and a brother of mine, Isidore Bloom, are associated in business as the Panish Live Poultry Company since January, 1929. Prior to January, 1929, my brother and I conducted the same business as A. Bloom, Inc., for three years. Between the summer of 1927 and the summer of 1928 I attended six or seven meetings of market men of the Bronx. The first of those meetings was held about the middle of 1927. It was once in awhile we would have a meeting. The last meeting was about the middle of 1928.

Goldberg or Rosenbaum of the Webster Poultry was at these meetings. I would see Max Rosen there occasionally. Kalman Gross was there. I have seen Mr. Hornstein of Spatz & Hornstein Poultry Co., at one or two meetings. I don't remember the particular names, but there were quite a number of marketmen from the Bronx. I could much easier tell you the firms that were represented there. Webster, Schonzeit's, Tremont. The owners of this Tremont were Jaffe and Greenstein. H. Raby's. Halpern of Max Rosen's place. The F. G. T. was represented there also. Sam Friedman and Goldberg of the Pullman Poultry Company, and Rosenthal of the Casanova came once in awhile. Max Sokoloff was there on two or three occasions.

[fol. 557] Most of the discussions were in reference to credits of the various customers of the poultry slaughterhouses; that it was pretty bad and that something should be done to make those butchers pay their bills more promptly. We spoke about one market not selling a customer of another market unless he had a paid bill, and so forth. They talked about certain dues to be paid in order to run a credit system; each one was to pay $50, $75 or $100. The one who had more customers would naturally pay more for his protection; that the next man would not sell a customer unless he had a paid bill. The amount to be paid was decided on the basis of the amount of poultry that they were selling. At no time was anything said about how much a pound he would pay. They would say, being as he sold more, he would have to pay more than a man who sold less. I sold about 30,000 pounds per week and paid $75 a week about eleven to twelve weeks, and then I paid $100 a week for about the same length of time. Sam Gold-

stein collected the first few payments and after that Louis Spatz collected. I don't know how the money was to be spent.

I paid a Mr. Dolobovsky about $150 or $175 a week for six or eight months. He had a few customers that it was hard for him to serve with the amount of business that he was doing, and I made an arrangement with him that I would serve that amount of trade that he had in my place, that it would cost me cheaper to serve them than it would cost him and I would pay him so much a week for him to let me do that. Mr. Spatz helped me make that arrangement. We talked it over with him that it was hard for him to serve his customers. I don't know the exact amount of business he was doing, but I do know that he did a very [fol. 558] small business in comparison to what other markets were doing.

I will tell you in what way it is harder to do a wholesale business than it is to do a retail business. You take a wholesaler, he goes down to the railroad and buys about five or six varieties of poultry and takes it to his place. He has a larger place in which to place that poultry. When his customers come to buy, he can pick any poultry that he wants either from this market or the next market, whereas a retailer which is considered a small place of business, he cannot go down to the railroad and buy five kinds of poultry. He takes in a few coops of a certain mark which probably don't suit every customer he has, and naturally it is harder for him to serve more people than a certain amount, and to serve forty accounts in our line and ten accounts cost just as much.

He sold me about six or eight accounts, which amounted to about 6,000 pounds a week. When he did a retail business, he still had to go down to the market and truck poultry up to the market; the only thing is, instead of trucking six or eight coops, he trucked fewer coops, and he still stayed at the same place of business. I want to tell Mr. Oseas he is jumping at a conclusion too fast. I want to make you understand, if the Court will allow me, that in order to serve these butchers, this same man would have to have two men and a shochet, which would cost him about almost $180 to $200 a week to serve those six or eight butchers; although it might seem a few to you, but that is the service they require; also that he would have to go down to the market for poultry

every day, whereas for the retail trade, he could go down Thursday or Friday for his few coops, and he would have [fol. 559] enough for his retail line. These transactions of selling customers back and forth were not talked about at the meetings.

I don't remember having any conversation with any member of our association at all as to what happened to the money that was collected every week. When Spatz came around to collect, he did not say whether or not other people were paying. Spatz never told me what he did with the money he collected. I do not know that more people paid besides myself, from the meetings we had, we all agreed to pay; people agreed to pay at the meetings, and I took it for granted they were paying since they agreed to pay those amounts. I know a man by the name of Mr. Mast. He never looked at my books. I made a payment to three gentlemen came in at one time to my office, Wickler of Wickler & Diamond, Grossman, and I cannot remember the third. They said they wanted to buy a present for Mr. Spatz. I gave them a check for around a hundred dollars. At that time those three gentlemen showed me a bunch of checks; they told me that everybody contributed towards this present and it would be just as well for me to do the same thing. They were all in the same line as I am. So I didn't question any more, and made out a check and handed it over to one of the three gentlemen. I did not pay any money to buy a present for any one else, on any other occasion, for any other marketman. They said they were going to buy Spatz a car; they didn't say what kind. I do not know whether or not they did buy him a car with that money. These payments were made mostly by check.

Cross-examination.

By Mr. Jacobson:

The Witness: I had talked over with Mr. Dolobovsky the amounts of business he did. He was my brother-in-law and [fol. 560] I knew exactly the amount of business he was doing. I knew, more or less, that it was not paying him. He was doing about 6,000 pounds of business in my place without going to any extra expense. The gross profits that I would make on those 6,000 pounds would be more than $200 a week. I could pay him $175 a week and still make a

little money out of it, while if he did it himself he would lose money.

These meetings at the Bronx Casino were not meetings of any association, but were meetings of the Bronx marketmen. Our meetings were about the Bronx business only. We were not bothering about Brooklyn or Brownsville, or the East Side, or Borough Park, or any place else. When we were discussing this credit matter in the summer of 1927, there was a subject for discussion among us marketmen in the Bronx for several years before. I began about May 1st, 1927, and for ten or twelve weeks, I paid $75 a week to the first credit association. This credit association broke up in the Bronx in No-ember, 1927. After we had stopped for quite a while, we formed a new credit association again, along the same lines; that lasted again ten or twelve weeks. In the second period I paid $100 a week instead of $75 a week. When I took over my brother-in-law's wholesale trade, it merely was transferred and I actually continued the business and did not refuse to sell any of those butchers.

Redirect examination:

The Witness: The way Dolobovsky transferred his wholesale accounts to me was that he would take the orders himself over the telephone, or some of them may have standing orders, and instead of sending them from his place, [fol. 561] he would send it from my place. He probably explained to them that they would get better poultry from me than they would get from him. The first few days he transmitted the orders there himself. After that, the butchers all remained my customers.

The following testimony was given by the witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: There was a credit association in the Bronx in 1927 which lasted six or eight months. I paid to that association $75 or $100 a week. Those payments continued from some time in May of 1927 to the early part of 1928. Since I ceased making those contributions of $75 or $100 a week, I do not know of anyvody making contributions to

credit association in the Bronx. I have never had any difficulty in buying poultry anywhere at any time.

Mr. Kaufman: I know the facts, Mr. Rice.

The Witness: I have not heard of anybody having any difficulty in the poultry business since the summer of 1928, only if his credit was bad, that is all.

Redirect examination.

By Mr. Rice:

The Witness: I recall when Ole Salthe came into the business, as the Dexter Live Poultry Company. I can't tell you when that was. I wouldn't say that that caused the breaking up of the association. We had this association for about four or five weeks after Ole Salthe started in the Bronx. It [fol. 562] went right ahead. I never saw Salthe attend the meetings of the association in the Bronx. I don't know if he paid any money to the association. I suppose he sold to any butchers or retail dealers that came to his market. I recall that he ordered about six carloads of poultry from the West every week, and operated a commission house as well as a market at that time. After Salthe came into the business, the association broke up around four or five months later. If they got together again, I don't remember. I don't remember that a committee of Max Sokoloff and Samuel Goldstein and several others was appointed to go to see Salthe in the summer of 1928. I don't know of any agreement between Salthe and the marketmen in the Bronx.

The association broke up a long time before the criminal trial. It was more than several weeks, but I can't recall as far as six months away.

Recross-examination.

By Mr. Kaufman:

I stopped making payments to the association early in 1928, and if that criminal trial started in October, 1929, the activities of this credit association ceased quite over a year before October, 1929.

Mr. Kroppy: I move to strike out the testimony of this witness on all the grounds previously stated.

The Court: Motion denied.

Mr. Kroppy: Exception.

[fol. 563] SAM KAMCHI, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by this witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

The Witness: I was present at a meeting of dealers and marketmen between the 20th and 25th of August 1928, in the Bronx Casino. There were present about twenty-five poultry dealers, no butchers. Sam Weiner was there. About four or five marketmen were present, Sokoloff, Louis Spatz, I. Frank and Sam Goldstein. Sokoloff asked us what we wanted, because we called them to the meeting; the poultry dealers called them to the meeting, so they asked us what we wanted. We told them we wanted open doors. That means that every chicken dealer should buy his poultry wherever he wanted it; if he pays or if he don't pay, it makes no difference. They told us they will let us know next Monday but did not do so. Our president, Sam Weiner should let us know.

I have been in the poultry business six years, selling only slaughtered poultry. Between the summer of 1927 and the summer of 1928, I bought from the Monroe Poultry Company. The owner of the Monroe is Aaron Steinberg. Matofsky was working there. I paid for my poultry at the Monroe, before the summer of 1927, three cents above the market. In the summer of 1928, he started to charge me six cents. I asked him why he charged me so much and he says "I got to charge you that price. I got to pay a [fol. 564] fine". He did not say who would fine him.

Mr. Kroppy: I move to strike out the testimony of this witness on the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fols. 565 & 566] BARNEY HECHT, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony given by this witness at a former trial in Oct., 1929, was read in evidence pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination:

I have been in the live poultry business twenty-three years now on 7 Jackson Avenue, Brooklyn. I buy live poultry and sell wholesale and retail. Prior to the summer of 1927 I bought live poultry at West Washington Market and at the railroad terminals—on the Erie, on the Delaware, on the New York Central. The Erie Railroad is on 14th Street, Jersey side. The Delaware is in Hoboken, New [fol. 567] Jersey, and New York Central at 60th Street, Manhattan. No other railroad. After I bought the poultry I got my own truck to bring it over. We sell them alive and kill them. After our customer picks out the live poultry we kill it for him. The poultry is slaughtered by the rabbi, the shochet, who works for me.

I did have conversations during the summer of 1927 with some of the defendants. Tootsie's brother and Wiener and one of the Rosensteins. (Defendant Charles Herbert stands up.) That's the man. (Joseph Wiener stands.) He was there at the time, too. I don't know his name, but I know he was there with them. Tootsie was there also. Here is Tootsie Herbert here (identifying the defendant Arthur Herbert). There were five or six people who came in at that time—Tootsie, Charley Herbert, Harry, his brother, and Arkie.

Sidney Rosenstein was not there. They came around and told me, "What are you getting for poultry?" I told them my price is 31 cents a pound. So they said, "You got to sell 42 cents," so I said, "Who said so?" They told me it is an order of Samuel Sahn. He is right over there (identifying defendant Sahn). They told me they are going away and will come back and see if I get a full price. If I don't they are going to hit me. On that day I pay 26 cents. A little later, in about half an hour, they came back. I had the prices marked in the window 31 cents. One of the fellows took a towel there where the women wipe their hands, and he rubbed off the sign. One said, "If you don't get a price"—one of the guys got hold of me by the coat

and says, "Come out here, come right outside, I am going to kill you to death." The one by the name of Wiener said [fol. 568] that. I said, "I am going to get my price." "I am going to call a cop up if you start to bother me." About an hour later Tootsie came in and said, "Why don't you try and get a price? If you are not going to get a price I am going to put four men in your place." I said, "I cannot get no 42 cents a pound, that is highway robbery, I am going to spoil my business." Then he said he will send two women inspectors, he sent out, how much you sell poultry. If you see two nice-dressed women you should know that's who they are, they will say that you sell 42 cents a pound. About a half an hour later those two women came in and I told them—they asked me what is the price and I told them 42, but I didn't make no sale. I went to the telephone to try to get somebody, but I couldn't get nobody. When those two inspector women came in and asked me, "What are you getting for stuff?" I told them 42 cents a pound, but I didn't sell them nothing. I went in the office and tried to call up. I waited until they went away and when they went away I tried to sell my poultry again for 31 cents. Then in time I came over to the market on the railroad and they bothered me. They steal the poultry out of my truck. They break open the crate, take a hundred pounds out, fifty pounds out. One of the men, Fishman, called me and said, "Why don't you join our association, the Chamber of Commerce?" I said, "I cannot join it." He said, "We made an association for you to make money—" This was in October, 1927. Hyman Fishman was working for the Chamber of Commerce. He said this to me. He said, "If you don't belong to the association you won't get any poultry," and in time I went over to the railroad. I went over on the Erie Railroad and I met one of the men, Tootsie's brother. He is sitting right over there, this fellow (indicating), and he said to Julius Rosenstein, who is there, and Arkie—he said, "That-son-of-a-bitch is here, we got to kill him here." They put one truck in the back of mine and [fol. 569] two trucks on the side, and one of the men named Arkie got on the truck, and another man said, "Give it to him," and he smashed my truck. Then they threw manure in the face, dead chickens in the face, nails in the face, and

when I start to holler "Police!" my face was all blood, and then he said, "We got to kill the bastard, we got him over here, we got to kill him." Then I went out. I didn't want any more poultry. I went over to West Washington Market and I said, "I cannot get any more poultry, to hell with the poultry." I used to go over to the market and buy from somebody a few crates of poultry, and I went home. In the middle of March I went over to the New York Central Railroad for poultry. One of the men named Nigger—Feinstein is the foreman—he came over to me and says—he had some paper—he said, "Barney Hecht, you are on the blacklist, you cannot get any more poultry." I said, "Why cannot I get poultry?" He said, "You better go and see Mr. Tootsie or Benjamin Simon, they will tell you if you get poultry or not." I stood a little and said, "I can do nothing," so I went to the office of the Chamber of Commerce. When I came to the Chamber of Commerce, that was Tuesday, I waited from the morning until 5 o'clock until Mr. Simon came in. Mr. Simon came in. I said, "Mr. Simon, why cannot I get poultry?" That is the man (indicating). I said, "Why cannot I get poultry?" "Well," he said, "you have to belong to us." He gave me a card I should sign. He said, "You got to pay 10 cents for every crate, how many crates you sell," and $50 a week I should pay to the association. I told him I wouldn't do it and I said to Mr. Simon, "You ain't got no association, but you got a blind trust. If this came up in court you go to jail with the rest of them; you remember three years ago when they tried to convict Sam Sahn and the rest of them," and Mr. Simon says, "I am working for a bunch of crooks, what can I do?" This fellow said he is the main man (indicating). Mr. Sahn told him he should go ahead and do [fol. 570] such things. He said, "Why, this thing would not go," he said, "I am going to resign—I won't work any more for you. They are going a little too far." I said, "I want to get poultry," and I said, "Don't you think, Mr. Simon, I know everything?" I stated, "Mr. Simon, a few butchers came over to me and told me what they are doing with him. There was a butcher bought of Sahn stuff, and then refused to buy from Sahn stuff, and a few gangsters went up to his house, grabbed him, put him in a machine like a bale of hay. Is that legal?" Simon said, "I know it is illegal and I am going to resign." Mr.

Simon said to me, "I am going to see to-night Tootsie, and if you will go to the market you will be able to get poultry." I said, "Why don't you try it now, call up Tootsie and tell him to give me poultry, so I will be able to get it to-day yet. It is 5 o'clock. There is stuff in the market." And Mr. Simon said, "I can't find him. You don't know where the bums are laying around, but I am going around specially to-night to see where I can find them. If I find them you will get poultry." I said, "You can locate him." He said, "You can go to-morrow on the railroad and get poultry."

On Wednesday morning I went to the railroad and Nigger Goldman came along and he said, "Don't go in the yard, you are on the blacklist, you can't get any poultry." (Defendant Goldman arises) There he is. He said, "Don't go in the yard, you cannot get any; you are still on the blacklist." He said, "Go over and see Simon; see Tootsie." I went over in Simon's office, Benjamin Simon, and he was not in the office yet—in the Chamber of Commerce.

Q. Go ahead.

A. I went over to Newark to try and get poultry and they refused me. They told me, "You must have trouble in New York so we can't give you any poultry."

Q. Who said that?

A. In Newark, I was over by Newark. There is two railroads there. They told me I can't get any poultry. One [fol. 571] fellow from Passaic was there and he told me, "You cannot get any poultry." He told me, "We are afraid to start out with the New York gangsters.

Mr. Shalleck: I move to strike out that testimony as not binding——

The Court: He can state that they refused to sell him poultry.

Mr. Oseas: A man may also state why.

The Court: Overruled.

Mr. Shalleck: Exception.

I went back to the market to find Mr. Simon, West Washington Market. I said, "Mr. Simon, I cannot get any poultry", and he told me I shall go over to the railroad and

everything will be all right. They won't give me any poultry. Mr. Simon said, "Well, we will see Tootsie". Tootsie came over and it was very near a restaurant, and they went both in the restaurant, and Mr. Simon told me, "You better wait outside and I will have a talk with him". They were talking about half or three-quarters of an hour. I went and I said, "Mr. Simon, what is it?" Tootsie said, "How many corners has a crate?" I said, "Four". Then Tootsie said, "You got to have four men in your place". I said, "You spoil my business entirely; you want me to have four men. I used to sell thirty-five crates of chickens a week and now I sell four." In a minute Charley Herbert came in and said, "Tootsie, did you know he has got his machine outside? I was going to take his machine and throw it in the river, but he has a man watching it." He wouldn't let him take the machine away. I left the machine near the traffic cop, they shouldn't take the machine away. I went out and I found Mr. Hirshon, the president of the Chamber of Commerce on the stand. I says, "Mr. Hirshon, I am twenty-two years in this business and I am entitled to [fol. 572] have my few coops of poultry and you want to chase me out of business entirely." He says, "Why don't you pay him?" I says, "I would not pay him and give you $50 a week because I cannot afford from him much I sell. The profits do not allow me I should sell as much." He said, "Why don't you go over to see Tootsie?" I said, "Why should I see Tootsie? Tootsie told me I should get four men in the place, four men, you know, on the average. I don't need four men in the place." Mr. Hirshon told me, "You should go home and close the door and take a gas pipe." That is what Mr. Hirshon told me.

I says, "Very good, Mr. Hirshon." Then I went over to see Mr. Sahn and I says, "Mr Sahn, why can't I get poultry? Why can't I get poultry for cash? I went all around looking for some poultry." He says, "Why don't you see Tootsie?" I said, "Tootsie told me I should get four men." You know everybody close their doors to me. I says, "I am not going to get anything of him, he tried to shoot me, he was going to shoot me." He says, "You are not going to get anything of me." I says, "All right," and went away. I went back in the machine. I went there, I went back and tried about twenty places, I tried to get from them chickens that I would be able to sell on Thursday.

Mr. Sager: I object to that.
The Court: He says he tried to buy chickens.
Mr. Sager: We object to that.
The Court: Objection overruled.
Mr. Sager: Exception.

A. (Continuing:) They all said——

Mr. Sager: If your Honor please, I object to this testimony.

The Witness: They all said, "I am afraid to give you the stuff".

Mr. Sager: I object to what was said.
The Court: Objection overruled.
Mr. Sager: Exception.

[fol. 573] I was over by Sol Phillips, and I was over on Siegel Street by Feldman, and I was over in Prospect Avenue—I was over to about twenty fellows and I could not tell you all. They would not sell any chickens. I left my machine right there on Park Avenue and I went back to Wallabout Market and I see a fellow named Jake Harrison, he was one. So I says, "Harrison, why can't I buy some poultry?" He says, "You are on the blacklist and I can't sell you any poultry." I says, "Why can't you sell me any poultry?" I says, "I will pay you the same price that you can sell." He says, "Well, I am afraid; how can I do it?" I says to Harrison, "What do you want to take poultry and give away to butchers and have to collect the money the next week?" I says, "Mr. Harrison, here is United States money, hundred-dollar bills, how do you like it?" He says, "All right," he says, "but I will give you poultry, but you cannot load it now, it is too light. You wait until it gets dark and then we will give you poultry." When it got dark, about 8 or 9 o'clock, I went over and he gave me poultry and loaded me up, and he says, "I won't give you any bills, and I won't give you any paper, nothing at all." When I came home with the poultry he sold me, were leghorn fowl, about twenty-five or twenty-six—myself I figured out that it cost me 42 cents a pound and I sold my stuff for less, I sold it for 34 or 35 cents a pound.

So when it came on Thursday afternoon, that was very rainy, and I went over to West Washington Market and tried to get some poultry. First I went then to Rosenstein's stand. I took my coat and I covered myself over,

nobody would see me. I went into Rosenstein's stand and I says, "Mr. Rosenstein," I says, "can I buy a few poultry?" He says, "You are on the blacklist." But I says, "If you give me I will pay a couple of cents a pound." He says, "I am going to sell you, but you got to come around Friday morning at 4 o'clock before the workmen come in." [fol. 574] I came around not four, but I came around at three and I was waiting when he came in. He started to beat up the stuff and I waited until he got everything ready, which was about a quarter to five. And I was going to load on the truck my own poultry. This was in the middle of the month of March, 1928. He told me he was going to sell the poultry. I got there around 4 o'clock Friday morning. I came in at 4 o'clock in the morning and he told me, "Wait until he feeds them up and then we will give you the stuff." That was about a quarter to five. I was ready to load up, and one of his men came in by the name of Schimmel, they called him, *he came in and says, "Don't* load up for him, he is on the blacklist. I am going to tell Tootsie, I am going to tell Simon." He says to me, "You cannot get any poultry, pull out." I pulled out. And I saw a little light burning in the Hudson Poultry Company. I went to the Hudson Poultry Company, and I says, "Can I have a few coops of poultry?" He says, "What do you want?" And I says, "I must have poultry, I must have a coop or two of poultry." He says, "All right, we will give it to you." I started to load up one or two crates, I loaded up eight crates, and one of his workmen came around and says, "Hey, what are you doing, what are you giving that fellow, he is on the blacklist?" So this fellow says to take the stuff off from the machine, so I says, "You will not take the stuff off the machine because I won't let you." I says, "You want to give me some?" And he says, "All right," and he says to me, "Go away as quick as you can." So I went home.

Then Monday I tried again West Washington Market for poultry and they told me I could not get it, so I went over to Philadelphia and I bought poultry in Philadelphia. So one of the men, Harry Shomer, came over. Here he is, that is Harry Shomer (indicating). He says to me, if I am going to bring poultry from Philadelphia he will put me in the ditch, going to kill me. I says, "Then I will be dead." Then he said, "If you want to bring any more

[fol. 575] poultry, if you bring poultry, your life is in risk." And he says to me, "If you want to bring poultry, you can bring your own truck because we are not going to load it for you any more poultry." So I went with my own truck and I took and I came back. That was in April, 1928. I went over to Newark and I bought a little poultry, and he came, that Harry Shomer, and there came a couple of fellows, and he told me, "If you are going to get poultry we are going to kill you." I said, "Then I will be dead and I won't have to die twice." That is all I said. There was Easter, Easter when they sold poultry for 45 and 50 cents, and after I sold my poultry for 35, so what they did to me. Simply came around on one Saturday with a gang and they put two fellows who put signs in front and back, in front of my door, and it says, "This place is on strike." That was in April, same year. I bought in Philadelphia three or four times about. Tootsie and his gang stood on all four corners and customers that was going there to buy chickens he told them, "This place is on strike, you should not go in there, your life is in risk, don't go in." These two fellows were walking up and down all day on Saturday in front of my place. I don't know the two fellows. They were workingmen, but didn't work for me. My workmen did not go out at that time. They were inside. They stood on the corner and when any customers come in—that was Saturday. On Monday they started up again. And one of them says, "How about Shapiro?" I telephoned him and he says, "I will be over," and Shapiro said, "What do you want of this man?" So Shapiro, the president of the shochets, came over to me in the place of business and he says, "You got to go out on strike, if you would not have any more union men they have got to go out on strike."

And Shapiro talked with Tootsie and then he came over to me and he said, "Now, listen"—Shapiro says to me, "If you will be a good boy and pay the price we will let you [fol. 576] have only one man, only one man you have to have in the place." I says, "All right, I will do it." So they put a man in the place, and the man did not do any work, di'n't do a thing in the place; only was sitting and smoking cigarettes and reading the paper. At 4 o'clock he went home. So one of the men, Harry Shomer, came over to me and says, "What do you want to go over to Philadelphia to buy poultry? You are all right now; you can get

poultry in New York." So I says, "I will see what it is, they mean an association, but I say they mean a trust." So I went over, I went over to New York to buy poultry, and as soon as I put my machine in front of the New York Poultry place I saw a fellow go with a knife and cut my four tires in the machine. That man who cut my tires, I know him in the market, but I do not know the name. He talked before with one of them named Weiner (the witness leaves the stand and goes to the body of the court room). This is not the man, some other fellow (pointing to defendant Joe Weiner). I went to him and I started to get my poultry right straight along. I didn't get any poultry from the West Washington Market. I was getting my poultry right straight from Philadelphia. At that time that my tires were cut I did not have any conversation with any of the defendants. I saw Shapiro the day before he put one man in, but when he cut my tires was about two or three weeks later. I did not have any conversation with any of the defendants with regard to getting money from the Chamber of Commerce. When I came over for poultry, to help me out with a coop of poultry, Morris Damsky said, "I am getting $200 a week," he says, "off them and I do not want to start up with them, and I won't give you any poultry." This man over there (identifying the defendant Morris Damsky). He is the only one I talked to there. He says, "I cannot give you any poultry," he says, "I am all right, I am getting $200 a week from the association and [fol. 577] I would not go to give you any poultry." That was on March 28th, 1928. In my conversations with the defendant Benjamin Simon he told me if I would not join the association they would make me take four union men in. He says to me, first he wants one cent a pound when I sold 7,000 pounds a week, and when I sold only about 800 pounds a week, then they wanted $50 a week. That was March 28th, 1928. That conversation was in the Chamber of Commerce. He later said he would take $50 a week. That was in March. That was when they stopped me buying poultry. I had two conversations. The first was in September, 1927, and the second one in March, 1928. In September, 1927, I was selling 7,000 pounds a week; in April, 1928, 800 pounds. On the occasion of which I spoke where I went over to the Erie terminal to get some poultry, I saw Sammy Sahn. He was alone. He saw what they were doing to me

and he said, "Give it to him." He says that to Arkie and Manny Herbert and Julius Rosenstein. Arkie's name is Weissler. My tires were cut on a later date. On the day my tires were cut I did not see the defendant Arkie Weissler around, but I saw Joe Weiner was there at the time. When I speak of Joe Weiner I mean somebody else, not this defendant. Max Kessler—that is the fellow there, he always stopped me off of stuff. He came around and said, "Stop the poultry; stop it." He was the stopper in West Washington Market. He said that a number of times. On those occasions I didn't get poultry; they would not let me get it. I came down, but didn't get poultry. On the first occasion when people came into my store and Weiner grabbed hold of me; this Weiner was another fellow. Defendant Weiner was with them, but the other fellow got me by the coat.

I saw this defendant but I do not know the name; he was in my place of business.

[fol. 578] Cross-examination.

By Mr. Sager:

I came down about four or five months after August, 1927, and they stole a lot of poultry out. I go down one time and buy ducks, and they stole the coop of ducks off. I got the coop of ducks on the machine and they pulled the coop of ducks off the machine, and I backed the machine and got the coop of ducks back. Then when I bought two coops of poultry off Garlick & Dinerman. I tied them with a rope, a hundred feet, and they cut the rope off and tried to get these coops of poultry off it. They followed me with the chickens and they tried to get the crates off.

I could not buy any chickens in Newark. I went over to Neuman and I went to another man. Neuman's concern is the Newark Poultry Company. That was in March, 1928. In Newark I also attempted to buy chickens from a man by the name of Morrison; he is in Passaic, New Jersey. He is in poultry over in Newark. He refused to sell me chickens. Those are the only two fellows I went there.

I bought chickens in Philadelphia; some of them refused and some of them sold me right away. I cannot tell you the name of the company who refused me in Philadelphia.

I undertook to buy chickens in New York here from commission men; they are men that receive the poultry in cars and put them in coops or crates and sell them to the dealers. I do a retail and wholesale business. I sell whoever comes into the place. I did not hire any men from the chauffeurs' union at any time. I did not hire any workmen from them; I got my own men. The shochet I have myself. The shochet was not a union man when I employed him. The shochet I had one time he died, and then I took another man and he told me he would never be a union man; he told me he would not be a union man and then he [fol. 579] joined the union, and what am I going to do about it? I did not want the union men. Shapiro was president of the shochtim's union. The Herberts, they are members of the chauffeurs' union. I didn't have any trouble with the union at all. The trouble was started when they made the Chamber of Commerce, that was where all the trouble was. I did not join the Chamber of Commerce. I was a member when Major L'Esperance was there and we paid 10 cents for a crate, and when that was passed I said no more because I cannot say how many associations they have. There was an association of men in our business over in Brownsville. I never attended its meetings. They did want me to join that association and pay $50 a week. I am in Brooklyn. I am in Williamsburg, not Brownsville. They never had an association there, only the Chamber of Commerce. They had one about five years ago. They did not have one in 1927 and 1928, I am sure of that. They had a Chamber of Commerce; that was all that they had.

I bought poultry at wholesale at 29 cents a pound and sold it for 34; that five cents profit includes cost of killing, rent, help and everything. I slaughter my chickens for the wholesale trade. I work myself and I try to make an honest living. I am working from six o'clock and stay until four. If it cost one cent, you know, shrinkage, say four cents profit on all expenses and I make an honest living. That leaves me four cents a pound profit. I pay my help out of that. On 7,000 pounds I make $280, and out of that I pay my help and expenses. I am satisfied if I make $50 a week after all expenses.

Harrison is not a commission man, he is a man the same as I, wholesale and retail man. I bought right straight

along in 1927 from the commission men in New York. In March, 1928, they stopped me off the stuff. I couldn't get any more. I was over by Kastein's and over by Norris and Nigger came and said, "Don't sell him poultry; he is [fol. 580] on the black list." I talked to Norris' weighmaster, Dan, and I spoke to Mr. Norris, too. Mr. Norris said, "I am going over to see President Herb Frankel," and he went over and came back and says, "I am sorry you got trouble with the association; you better go and settle it." It was in March, 1928, I went to Mr. Norris and tried to buy chickens of him and he told me to see Mr. Frankel, the president of the association. I tried to get poultry from Julius Kastein and he refused me; that was at the same time I had been to see Norris. He said, "You know, you cannot buy poultry." This fellow Kessler followed me every place I went. There is no use going there; he followed me every place I went. He said to the man, "Don't load him any poultry, don't load him any poultry." I don't know whether Kastein is a union man.

At one time I had some stock in the Community Poultry Company. They forced me in, I couldn't get any poultry so I had to join the Community. I managed one of the branches of the Community Poultry Company. I was not discharged; they didn't let me go; they didn't pay me; they owed me about $3,000, they didn't pay no wages; they were supposed to pay rent, wages and expenses, and didn't pay nothing. They told me the association didn't make any money so I have to go and fight them in the court. They arrested me and I arrested him, too.

[fols. 581 & 582] Cross-examination:

When I went over to Newark to buy chickens, one man over there told me that I must be in trouble in New York, and he didn't want to sell me any poultry. That man was Morrison. He has his place in Elizabeth but he handles one car or two sometimes a week on the Newark railroad. He unloads in Newark. I met him at the terminal in Newark, at the car. I know him very good. He used to come to me often for poultry. I don't know under what name he does business. The man I met from Passaic is the same man. He is the man I saw there. He said he can't give me any poultry because I don't want any trouble with New York gangsters.

I tried to buy poultry from Harrison here in Brooklyn. He is a retailer. I asked him for a favor, he should sell me stuff because I ain't got no poultry for to-morrow's trade. He said he is afraid to sell me on account of they wouldn't sell him. I don't know whether Harrison could not sell me live poultry under the law because there is an ordinance or State law that prevents him from doing it. I asked a man named Phillips to lend me a coop of stuff for my trade and he said he is afraid from gangsters. On direct examination I said I tried to buy from Phillips. [fol. 583] Phillips is a retailer. I don't know of an ordinance or of a State law that requires any person who is engaged in selling live poultry to have a license. I have been in the business twenty-three years. I have been in the slaughterhouse business.

Q. Don't you get a book every year with the New York laws and rules and regulations of the Health Department governing your business?

A. I don't look on that. We don't sell no live and I don't look on that. I didn't read it. I did my business regardless of the rules and regulations.

Cross-examination:

The first time that I went to see Mr. Simon was on September, 1927. I never saw him before that day. I saw him three years ago in the office of the Attorney General of the State of New York, 51 Chambers Street. I was there at that time as a witness against the Community Live Poultry Company. Mr. Simon at that time was connected with the office of the Attorney General and he was investigating the Community Live Poultry Company. I joined the Chamber of Commerce in June, 1926. While I was still a member, L'Esperance became the supervisor. I saw Mr. Simon in the Attorney General's office when I was a witness against the Community Live Poultry Company quite a few times. After Mr. Simon left the Attorney General's office and became supervisor of the Chamber of Commerce, I met him in 1927 once and I met him in March, 1928, and that is all.

The Community Live Poultry Company was an association in Brooklyn. They owed me $3,000 and I owed them $700. They didn't pay me no wages or nothing, so when they give me the goods I had to pay off the people. I didn't ask Mr. Simon, after the Community Live Poultry case

was over, to see whether he could cancel the indebtedness of the Community Live Poultry Company against me.

[fol. 584] I did not talk with Mr. Forsmith. I am in bad favor with this man, I never talk to him, never see him, I am in bad favor with him since the Community bust up. I don't know Mr. Reisner, sitting here, at all. I don't remember nothing about going to Libby's Hotel in 1927. I was never in Libby's Hotel. I did not belong to the Live Poultry Dealers' Board of Trade of Greater New York.

I don't talk to Mr. Forsmith. I seen him pass through in the market but I never talked to him. From 1926 down to the present time I had no conversations with Mr. Forsmith. I know Mr. Phillips. I know a man by the name of Louis Ritter. I didn't talk to him because he is a neighbor and competitor of mine and I don't talk with him. I do not remember Louis Ritter coming to my place and my giving Louis Ritter a check for $100. I had no trouble with the union in 1926. In 1928 my place was picketed, but not 1926. I do not remember a general strike in the early part of 1927.

I truck my poultry in by machine and I know that poultry that comes in on the trucks is inspected. The poultry that I truck in on my trucks is inspected. I will show you the slip. As soon as I come in, I call up Dr. Ives, he shall send me a man. I can show you the slips of inspectors come in and give me O. K. I don't remember the names of the inspectors. I brought in a lot of poultry from Philadelphia. One inspector that inspected my poultry that I brought in by truck is Dr. Weinstein. It is not a fact that I told Mr. Forsmith that the reason why I was bringing in poultry by truck is due to the fact that I did not care to have it inspected by a Government inspector. I had some kind of quarrel with Mr. Forsmith and I had a quarrel with Mr. Ritter. Phillips is one man in the poultry business with whom I am on friendly terms; this man Phillips is a brother of Phillips & Nizer, lawyers, who brought a lawsuit for Taits in Brooklyn.

[fol. 585] Mr. Forsmith did not tell me that he would not join the Poultry Board of Trade if I were a member because I had committed perjury over in the Community Poultry Trust case in Brooklyn; he didn't tell that to me in Libby's Hotel. I did not see Mr. Rice in Libby's Hotel.

Mr. Oseas: I will stipulate that Mr. Rice was there.

I was not there at all. They sent me telegrams and postal cards and I didn't want to go and I didn't go. I don't know that Mr. Phillips collected any money.

Cross-examination:

I had someone working for me in 1927 and 1928. He is working now, too, the same man. He is not a union man. The first name is Tony. The last name I don't know. Tony left my place in March, 1928. No one told me I should have union men. They called a strike in my place for two days. Then I discharged Tony. He was working for me a little but not entirely. He used to go with me to Philadelphia to get chickens two days a week. They put Morris Weiss to stay in the place and smoke cigarettes and read the paper. I paid him; otherwise they would be picketing the place yet. While Morris Weiss was working for me I went to Washington Market. The union loaders cut the tires--not loaded the trucks. I came around the first time and they cut the tires. This was in April, 1928. After the time when they cut my tires, I did not go back to Washington Market. Up to March, 1928, I was buying my poultry in West Washington Market and all over, and I got whatever I wanted up to March of 1928. Even though I got a lot of complaints between August, 1927, and March, 1928, I got whatever I wanted, but under what conditions! They used to steal poultry off me. Tootsie's gang did the stealing. I did not [fol. 586] see Tootsie or his gang or anyone else do the stealing. When I sit in the front, driving my machine, I could't see who was robbing me in the back. This happened in New Jersey; positively, they are all over. Here is his brother (identifying Emanuel Herbert). I didn't see him steal but I said he was there. Any time when I came over on the railroad I met him. I met Julius Rosenstein, too, when I drove the machine. I couldn't see in the back. Emanuel is a foreman for the trucking company in New Jersey and he works on the railroad. I didn't see him run after my truck. I looked in the front; I didn't look on the back who did the stealing. No one was on the truck with me. My truck was robbed on the way to New York from New Jersey a lot of times. Although my truck was robbed a lot of times, I never had anybody with me. I was interested in finding out who did the robbing, but what could I do? I was robbed of sometimes fifty pounds, sometimes

seventy-five pounds, sometimes a hundred pounds, worth twenty-six to thirty dollars. I knew every time I went to New Jersey I was losing anywhere from fifteen to thirty dollars' worth of chickens. I never paid for a man to go with me. A man would cost five to six dollars a day.

The New Jersey Live Poultry Trucking Company does not send two men with each truck from the railroad yards to the ferry. The New York Live Poultry Company may be responsible for every dollar of loss or theft on their own trucks until after the truck gets onto the ferry, but not for losses and thefts on other trucks. Nobody from the trucking company went with my truck from the railroad to the ferry. I do not know whether the railroads employ detectives in their yards to protect the property that is loaded from the cars to the trucks. All that I know is, that between August and March, that every time I went to New Jersey to bring back a load of poultry, my trucks were robbed of anywhere from 50 to 100 pounds of chickens. I didn't go [fol. 587] often to Jersey. I used to go to the market. They robbed me that week, so for four to five weeks I didn't go there. I bought my stuff in the market. I knew it was Tootsie and his gang because since they start me the trouble from August, 1927, the trouble begins.

I was over in the Erie Railroad. They threw manure in the face, throw dead chickens in the face, throw eggs in the face. That happened in the first part of March, 1928. When they came around and told me to get a price, this and this price, and I refuse them, then the troubles began. That was in August, until March. The first thing that happened, they sold the poultry out; that was in September. Then they stole poultry between August and March. They broke my machine a few times. I told you they stole the chickens and broke the machine, and throw me dirt in the face. It was Mannie Herbert, Julius Rosenstein and Arkie, the good fellow Arkie. I will tell you some other things about Arkie. Arkie told me some days I will find my head in the ash can and my body in the sewer.

When I went to the New York Central Railroad and I saw Nigger Goldman, he told me, he says, "Don't load for him because he is on the blacklist." He pulled a paper out from his pocket—here is something more you ain't heard—the blacklist. He went around and says, "Don't load him, don't load him, don't load him, don't sell him, don't load him, he is on the blacklist." I know him for the last maybe

fifteen or eighteen years, maybe more. He was a stopper, he is the one on the railroad, and Max Kessler is the second on the market. Those two stopped me from buying poultry. I only know those people that was over to my place. There was Tootsie and his brothers Charlie and Harry; there was Joe Wiener, and there was Rosenstein. That is what I saw when they all came together to tell me to take the price up.

[fol. 588] Q. Is that the one that you say you saw, Joe Wiener?

A. Joe Wiener, yes.

Q. He was in your place when?

A. On August of 1927.

Mr. Kaufman: May we have the record show that the man whom the witness identified at this time is the defendant Dave Kaufman.

Q. Who told you that man's name was Joe Wiener?

A. Well, I heard in the market his name Joe Wiener before he even started to give me trouble.

I saw these men that came into my place at that time, in the market lots of times. I knew their names at that time. They did not belong with the market. I saw them around the market. When they came into my place at that time they told me what to charge for poultry. They took a towel and wiped out the price sign on the window. They told me they will send around a woman, one woman, to know and find out—two women, the inspector, if I get that price. Then they came around again and they got hold of me by the coat and they says, "Now, listen, you did not get the price; you are a liar. You told us but you lied. I will come over and kill you right outside." I was afraid. I did not go to the police station and say five men by the name of Tootsie Herbert and Charley Herbert and Mannie Herbert and Joe Wiener and Rosenstein were in my place and they threatened to kill me. I didn't do anything about it. They came back in March, 1928, and they picketed the place. Between August of 1927 and March, 1928, they did not come to my place.

By Mr. Hallheimer:

I remember saying that I always wanted to sell my poultry as cheaply as possible and that I was satisfied to make

$50 a week. After I bought my poultry in the market, I add about one cent for shrinkage; then I added on the cost [fols. 589 & 590] of slaughtering the poultry. I did not add on the electric light. I did not add any other charges. I told you what I added on; that is all.

By Mr. Sager:

During the time I was in business I never had four men handle my fowl. I only got one man.

(Defendant Wiener stands up.)

This Wiener was the man that was with them when my place was picketed. It was this Wiener. He was standing on the corner telling people, "Don't go in the place, this place is on strike." At that time I had a shochet in my place. Kalman Shapiro of the shochets' union came around and told me, "The shochet will not work for you." He said, "One union man in and keep the price I am telling you." I was to keep this union man in, that was this union shochet. I never spoke to this Joe Wiener. I did not know that he was the delegate of the shochets' union.

There was no time, between the summer of 1927 and the summer of 1928, when I failed to pay any of my bills to any commission man. I don't owe a button to anybody.

[fol. 591] Barney Hecht testified at this trial as follows:

Direct examination.

By Mr. Rice:

I am a retail marketman in Williamsburg. I attempted to purchase poultry at the New York Central terminals in June or July of 1931. I went to buy poultry from the Acme Commission House on the New York Central in Manhattan, and he sold me 11 coops of poultry. I hired one of the New York Live Poultry trucks; they should load it up on them. They had to load up 11 coops of poultry and we brought it over on the West Washington Market, and we came down in the market, the machine came down the market. I saw

Tootsie Herbert and Charley Herbert and Harry Shomer, they had some talking between them and they called over the driver and they says "Listen driver, that stuff can't be delivered to Barney Hecht's, he can't buy no poultry in New York.". He says "give me the ticket where you bought the poultry." I said "You can't have the ticket because I put my signature on the ticket." I went to the office where the Acme Poultry Company is and I said: "My dear friend, this Tootsie, that bunch of gangsters, that bunch of racketeers says I can't get no poultry in New York. Here is the ticket with my signature. You can have the poultry, I can't get no poultry in New York," and I went home.

I went directly to the railroad car to buy the poultry. All the commission men are willing to sell it. They had 40 cars on the track and every commission man was willing to sell me all the poultry, because they know my credit is good. I had cash with me and they did not want the cash. Nothing was said at the time that I loaded the 11 coops on the truck of the New York Live Poultry Trucking Com-
[fol. 592] pany.

Q. Is that the trucking company that hauls all the poultry?

A. Yes. Nobody dassn't go in and load poultry except in their machines of the New York Live Poultry Trucking Company trucks. If I hire trucks anywhere else, they won't load them, because all their trucks have to deliver the stuff and nobody else's.

Mr. Kroppy: I move to strike out his answer on the ground that he testified to a lot of conclusions.

The Court: Denied.

Mr. Kroppy: Exception.

After I had bought the poultry, I asked the commission men to load it on to the trucks of the New York Live Poultry Trucking Company, the same trucking company that gets all the poultry at the New York Central Terminal and delivers it to West Washington Market. They deliver it both to the railroad terminals and to the West Washington Street Market—the marketmen's market. After the poultry was loaded on the truck, I rode on the truck to West Washington Market. I saw the truck driver talk to Arthur

Herbert, Charles Shomer and Charles Herbert. I did not hear what they said. After I saw them talking, the driver came over to me and said, "Barney, give me your ticket." I said, "I can't give you the ticket. It has my signature on it." He was referring to the ticket the Acme Commission Company gave me at the railroad terminal, I put my name there and I said, "I am going to the office and give them the ticket back." He said Tootsie Herbert and Charlie Herbert they said you can't get no poultry in New York City. I asked him "why" and he said, "You know why. You ain't buying for a long time; they won't load you no more poultry. You can't get poultry in New York." I went back to the Acme Commission House and gave them the ticket back. I said, "My signature don't call for me to give you any money because I did not get the poultry." He said, "All right, we wouldn't ask you for any money." I talked at the Acme Commission House to Dave Gordon, [fol. 593] just he himself. I went home without the poultry. Then I went to Philadelphia to get poultry. I went on the same day, at 12 o'clock at night. I got some farmers there that I know that give me poultry. A few refused to sell me any poultry. I went to Philadelphia and I got the poultry. I bought it from a few people, some farmers that I knew. I bought at that time 2,000 pounds of poultry. I got the poultry home. No one talked to me on the way home, and I sold that poultry all right. Back in June or July, 1930, I went also to Philadelphia for the purpose of buying some poultry. Before I went to Philadelphia on that occasion, I went to the railroad terminals in New York for the purpose of buying poultry. Everybody wanted to sell me, but they said there is no use selling you because Tootsie said he would not load. At that time I went to the West Washington Market and I attempted to buy poultry from the various commission men; I went to pretty near every commission house. Samuel Werner, James Norris, Fleck, and Sol Frankel. I went to all of them. I cannot remember all of them. They say we will sell you but what are you going to do; Tootsie won't let you load. I saw Arthur Herbert, Charlie Herbert and Shomer in West Washington Market. I also saw Max Keslin. I don't know whether he belongs to Local 167, I don't know anything about it. I did see him with Charles Herbert and Arthur Herbert all the time. I don't know the name of Arthur Herbert's

union, and I could not tell you whether Max Keslin belongs to the same union that Arthur Herbert does. I saw Max Keslin when I went around to these markets, to the commission houses to buy poultry, he told them "He is on the blacklist." He followed me down every place. He said we can't load him any poultry. I have not seen Max Keslin do anything else in West Washington Market. I have seen him a lot of times in West Washington Market just going around. If anyone was on the blacklist, he was looking, he had a paper.

[fol. 594] Mr. Kaufman: I object to that and move to strike it out.

The Court: Denied.

Mr. Kaufman: Exception.

The Court: I will wait till he gets through. Let him tell his story and then you can move to strike it out if you want to.

The Witness: I could get poultry, so I seen him going around with a paper. Anybody that was on the blacklist did not get it, he went around and said: "This man is on the blacklist."

Mr. Kroppy: I object to that; he said he went around with a piece of paper, he was not there.

The Court: Over-ruled; it has not appeared yet.

Mr. Kroppy: Exception.

Q. Did you see Max Keslin do what you stated?

A. Yes, a lot of times.

The Witness: I couldn't say how many times. I saw him when they started up with the Chamber of Commerce. As soon as that started up, the Chamber of Commerce, he was on the job. He was working before on the stand to lift up coops but as soon after the Chamber of Commerce started, Tootsie got a job with them and they took him away from the work and he did the work, Tootsie stopping up the poultry. I was on the blacklist; he came around and says Tootsie told him that Barney Hecht is on the blacklist, he can't get no poultry, all right, he couldn't get no poultry. He followed me around to every commission man. He told them "Don't sell him." I saw him follow others. I saw

some other marketman who is on the blacklist before I was. I couldn't remember who it is. It was before the time I was on the blacklist. On those occasions I saw Max Keslin talk with Arthur Herbert, and I heard Herbert say to Keslin "He can't get no poultry." I did not hear Keslin talk with anyone else in the Union. I don't know anything about it. [fol. 595] I didn't go to West Washington Market in June or July, 1930, at all. I have been talking about 1931, between June and July.

I bought my poultry in 1930 in Philadelphia, every week. Before I went to Philadelphia, I bought my poultry in New York. We went on the market, on the Central, on the Erie Railroad, on the Delaware Railroad, on the Pennsylvania Road. I am talking about 1928 when we used to buy in New York, but not 1930. 1930 I was buying poultry in Philadelphia, and nowhere else. I started to go to Philadelphia in March, 1929. Before March, 1929, I bought in New York, and was able to buy poultry all over. In March, 1929, I was refused at the New York Central. I went in a yard where the New York Central is, so one of the foremen of the New York Live Poultry Trucking Company, called "Nigger" came out with a list and he says "You can't get no poultry around New York, because you are on the blacklist. He says: "Go over and see Mr. Simon. Talk to Mr. Simon." I went over to Benjamin Simon, supervisor of the Chamber of Commerce. This was in March, 1929. He came in and called me in a private office. He says "What do you want?" I says: "I want to get poultry." Mr. Simon says: "You can't get any poultry unless you join the Chamber of Commerce and you got to pay us $50 a week. If you don't, the union will put you four men in the place, if you need it or you don't need it." I told Mr. Simon "If you ain't going to make it any better I am going to put you in jail the same about the time you were in the Attorney General's office. Now, you will have to go again in the jail." Mr. Simon says "I am working for a bunch of thieves, the marketmen is a bunch of thieves." Then he says "He got the gangsters, those bunch of gangsters; I got to do whatever they say. If I don't do it, I am no good." He said the gangsters were Tootsie Herbert, Charley Herbert and Joe Wiener. He told me, "I am afraid from them, you understand, I would like to see if you could get poultry——" I says, "Mr. Simon, I ain't

[fol. 596] got a pound of poultry in the place; what am I going to do?" He says to me, "Go over tomorrow morning on the New York Central and tell him I said he should give you poultry." I says "Never mind, you better see Tootsie before." He says, "I can't see him. You know Tootsie. They are all a bunch of bums. They are laying around the cabaret houses, the speakeasies, I can't find them." But, he says to me "I am going to try to get them and you go over tomorrow morning on the New York Central and get poultry."

I went over the next day on the New York Central, the same fellow, the foreman from the New York Live Poultry told me "Don't go in the yard; you can't go in, you are on the blacklist." I don't know anything about it. I went over to the Chamber of Commerce and I was waiting for Simon. They told me Simon wouldn't be in all day, and that was Wednesday and I needed poultry badly for the Thursday business. All of a sudden I went over to Newark to try to get poultry. I went over to Newark and they told me "You must be on the blacklist and we are afraid for the New York gangsters." In Newark, I talked with Newman, a commission man, and I met a few and they told me "at no prices," they were afraid to start up with the New York gangsters. So I went back. That was about four o'clock. Simon was at West Washington Market. I says "Well, Mr. Simon, what do you say?" He says "Tootsie is here. I am going to have a talk with him." He went in with Tootsie and they had talk for about a half hour. I saw them talk inside a restaurant. I went in there and said "Well, what do you say, Mr. Simon, can I get poultry?" He says "I don't know." He says "I will talk to Tootsie." I says "All right." He says "Tootsie says you got to pay for four men. How many corners has a crate?" So I says "Four." He says "You must have four men in the place." I says "What am I going to do with four men? I only sell a little poultry."

Q. How many men could you afford to employ in your place?

[fol. 597] Mr. Kaufman: I object to that.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: I can't even afford one man. I only got a plucker. When I see I can't do anything with him I went over to see David Hirshon; he is the president of the Chamber of Commerce and I met him at Hawk's stand. I said, "Mr. Hirshon, why can't I get poultry?" Mr. Hirshon said, "Why don't you join the association?" I said "I will never join it." He said "Why?" I said "I wouldn't join; I wouldn't pay any money." What I am testifying to now I testified at the criminal case.

Q. Well, that testimony is going to be read so we won't go over that.

Mr. Kaufman: The only difference is, Mr. Rice, he said this happened March, 1929. His testimony in the criminal proceedings indicates it happened in March 1928. It is perfectly clear, there is no question about that.

By Mr. Rice:

Q. Mr. Hecht, what year did this happen? Now be careful.

The Court: What are you talking about? There are so many thises. What year did you talk to Benjamin Simon up at his offices?

A. I am sure, well I am not sure, I think it is 1929, that is what I think.

Q. Are you sure it was not 1928

A. No, I don't think so; I think 1929.

Mr. Kaufman: On page 267 he testified that he saw Benjamin Simon twice, once in September of 1927 when he was a witness against the Community Live Poultry, once in September 1927, and the second time in March, 1928, and he told precisely the same story with some variations from the story he told here.

The Witness: That is so long, I couldn't remember. I testified at the criminal trial in October 1929. I think it was five or six months before the Jewish holidays.

Mr. Rice: If your Honor please, I myself am not straight whether this happened in 1928 or 1929.

Mr. Kaufman: The record is perfectly clear.

Mr. Rice: I don't think the record is clear.

Mr. Perlman: If your Honor please, it is very important to know whether it is 1928 or 1929. We contend that up till 1928 it is apparent that some conspiracy has taken place [fol. 598] because the Court has so held anyway. We say it was abandoned some time in 1928. Now, whether it happened in 1929 it is very important evidence.

Mr. Kaufman: Again, on page 269 he talks about 1927 and March of 1928. He talks about it several times on that page.

Mr. Rice: I concede that he does.

Mr. Kaufman: Then again, on page 272, he talks about March of 1928. Again on page 272 he says it was between August, 1927, and March, 1928.

Mr. Perlman: Here is his testimony; here is the stenographic record.

Mr. Kaufman: On page 268 he testifies it was between 1927 and 1928.

Mr. Rice: I can't make this witness say it was 1928 if he does not wish so to do.

Mr. Perlman: It is perfectly all right; we will read his testimony.

Mr. Rice: Very well; that will be read with the testimony that has been given. May I state this, that in the criminal case, the Government adopted the theory that it was not permitted to prove overt acts after September, 1928, and therefore no effort was made to prove any overt acts after September, 1928.

The Witness: I would say I saw Benjamin Simon at his office in March before the criminal case. Whether it was March of the same year or of the previous year I couldn't tell you. I think about 7 or 8 months it was before the criminal trial. What year the criminal trial was I don't remember. I think it was in 1929; that is what I think.

Q. Did you have any way of computing or any way of finding out how many months it was before the criminal trial?

A. About seven or eight months, I think.

Q. Now, do you have any way of finding out whether it was seven or eight months after?

A. I couldn't tell you.

Q. How do you estimate it is seven or eight months?

Mr. Kaufman: I object to that; he is asking for the operation of the witness's mind. It is incompetent.

The Court: Overruled.

Mr. Kaufman: Exception.

Q. How do you figure it was seven or eight months before the criminal trial?

A. I met him in March; that was the second time. Then the criminal court I think started up in September, didn't it?

[fol. 599] Q. After the foreman of the New York Live Poultry Company talked to you at the New York Central terminal, where did you buy your poultry?

A. I couldn't get no poultry; I went down, I told you, I went down to Newark. I couldn't get it then; I couldn't get no poultry.

By the Court: Down where?

A. I had to go and get poultry by some marketman in Williamsburg. I met his son and I said "Can I get some poultry tomorrow?" He says "I know you are on the blacklist but if you will give me three cents a pound profit I will sell you poultry. You come around Friday morning at four o'clock and we will get you the poultry."

Q. Did you continue to buy poultry in town?

A. Yes, sir.

Q. How long?

A. I was going to buy it.

Q. How long did you continue to buy poultry in town, in New York City?

A. When?

Q. In March?

A. That is the time they stopped me up so I couldn't get any more poultry.

Q. Then what did you do after March of either 1928 or 1929?

Mr. Kaufman: He said 1927 or 1928.

The Witness: I couldn't remember the time.

Mr. Kaufman: I object to his statement.

The Court: Overruled.

Mr. Kaufman: Exception. Counsel, if your Honor please, has improperly quoted the testimony of this witness.

Mr. Rice: He immediately thereafter said 1927 and 1928.

The Witness: After March of 1928 or 1929, whichever it was, I went to Philadelphia. I went over to a couple of places, I couldn't tell you the names. So they refused to sell me. Reiser & Rabinowitz sold me a little poultry. Levit said he would sell me poultry on the quiet but nobody should know it. Then they refused to sell me, they said they were afraid. So I had to buy from the farmers. I hired Levit, the trucking company in Philadelphia to truck it to my place. When we came over, Harry Shomer came over to the place and he says to the driver "If you are going to bring over poultry from Philadelphia over here, we will throw you in the river." This was in March of 1928 or 1929. I went over again to get another load of poultry and the trucking company refused to take it over. No-
[fol. 600] body wants to take the stuff over. I had to go back home and get my own machine and take my stuff home. Then I was afraid to take my truck again, so I hired from Brooklyn a truck and Harry Shomer came over again to my place, and before I had my poultry in, he said to the driver "If you are going to take stuff over to this man, I am going to put you in the river." "This man is on the blacklist." So this trucking company refused to take the stuff over again—so I had to go with my own machine and bring the stuff over. I did haul the poultry home, and sold it. Tootsie sent over a couple of men with signs and they went to the door and they said "Your place is on strike" and then for every customer that passed through they told him "This place is on strike." Tootsie Herbert and Charley Herbert and the other bunch were standing on the whole four corners, maybe about 20 and they told the customers, "Don't go in this place, it is on strike." It was on a Saturday and Monday morning they came out again, these fellows with signs by the door "This place on strike." I put a sign out "This is not a strike-out. This is a bunch of gangsters. This is a bunch of racketeers that want me I should pay 15¢ a pound for poultry that the poultry only costs about 28¢ and we should sell it for 37¢ and I refused to pay the price. That is the reason they go on strike." Prior to that time, it cost me 28¢ and I charged 33¢. I never charged more than that. The other marketmen were charging at that time in my district 45¢ and 48¢ a pound. The market quotation was at that time, I think—I couldn't tell you exactly—I didn't buy in New York. I

bought in Philadelphia. I figure—I couldn't tell you exactly—I think the price was about 28¢.

After the criminal trial which took place in October or November, 1929, I did not buy poultry in New York; I tried all over but they wouldn't load me. I went to every commission man in New York and they are all willing to sell me poultry but Tootsie says "You can't get no poultry in New York." They are willing to sell me, but Tootsie—the man refused to load me. I went to West Washington Market and to the New York Central. That is all. This was about two weeks after the criminal trial. Then I went over to Philadelphia to get poultry. I took my own truck and loaded it myself. I bought from Reiser & Rabinowitz; sometime I buy off Levit; sometimes off the Eagle Com-
[fol. 601] pany, sometime off Pober; they sold me poultry. I hauled it home and sold it. On the way home there was a cop; he used to work for the New York Live Poultry Company and they called him "Red".

By the Court:

Q. "Red"?

A. Yes, he has red hair. He is a cop on a motorcycle. He stopped me sometime and he said to me "Say, listen, I am supposed to give you all the trouble what you want." I said "Why?"

Mr. Kaufman: I object to the conversation between a police officer and this witness.

The Court: Over-ruled.

Mr. Kaufman: Exception.

The Court: I can't tell whether it will be connected up. If it is not, I will disregard it.

The Witness: This was in 1930, about 7 or 8 months after criminal trial was over. The policeman told me that Aaron Weisler, Tootsie Herbert and Charlie Herbert promised a certain amount of money that he will give if he is going to give me trouble on the road. Now he says, "Go home and tell everybody that you paid $25 for speeding." I said "All right." I went home and I says to every market man I see, "I paid $25 for speeding." Every week I had to say the same thing. He met me every week on the roadway in New Jersey, and I said, "I paid $25 again; I paid $25 again." That is what I had to tell. He said

Charlie Herbert and Tootsie Herbert promised him a certain amount of money for giving me trouble. He said, "Go home and tell to everybody that you paid $25 fine for speeding." So he would be able to get some money from them. I was not speeding. This was a motorcycle cop on the highway in Rahway. When he stopped me the first time he said "What is the matter, are you in trouble?" I said, "I am." He said, "Can't you get enough poultry in New York?" So I said, "Tootsie Herbert don't let me alone in New York." He knows all about it, because they would stop by him and tell him what to do, to give me all the trouble they could on the road.

The Court: I am not taking this as evidence of what happened between him and the policeman—I am not taking this as a fact or evidence that it happened unless it is otherwise connected. It is merely within the decision of the [fol. 602] Court of Appeals as explanatory of something. I will say to you, Mr. Rice, that up to this time it looks to me as if it is utterly incompetent. You have not connected it in any way.

The Witness: I had not seen him talk to Arthur Herbert before that. I don't know whether he belonged to his union or not. At the time he worked for the New York Trucking Company, I remember that he had a button on his hat.

I bought poultry in Philadelphia during the year 1930 every week, all year around, and I always hauled the poultry home. No one else talked to me on the highway in 1930. I had trouble in 1931. On April 3rd I went over with a load of poultry from Philadelphia and when I got to New Brunswick, I was stopped by the Society for Prevention of Cruelty to Animals. One fellow had a market in Perth Amboy, New Jersey, and he stopped me. Two men stopped me. They says, "Three crates of poultry is overcrowded." They were representatives of the Society for the Prevention of Cruelty to Animals.

Mr. Kaufman: I object to that as incompetent, not binding on any of these defendants, unless it is shown that these two agents of the Society for the Prevention of Cruelty to Animals were in some wise connected with the defendant.

The Court: Overruled.

Mr. Kaufman: Exception.

The Court: I will admit it subject to connection, either circumstantially or directly, I cannot tell yet. Some things cannot be connected directly but may be connected by certain circumstantial evidence. I will give it no effect unless it is connected up.

The Witness: One of the fellows says, "Say, you are Barney Hecht, ain't you?" I said, "Yes, sir." So he said, "You are the man we are looking for." I says, "All right." They says, "Pull over to the side. Turn around to the gasoline station." I turned around and he says, "Three crates overcrowded." They says, "We are looking for you," and they pulled me to the gasoline station, and one of them he says "$27.50 fine." He says, "Be sure and take another crate and loosen up those chickens." I did loosen them up. In New Brunswick those two men followed me down. I came to the highway and those two men blowed a whistle again, "Pull over to the side, some [fol. 603] more crates overcrowded." They took me to another gasoline station—that was in New Brunswick, and he says, "$37.50." Then they told me, "If you ever go through the same road, we will take your truck and your chickens and everything. Be careful." So I asked him, "Where is your beat?" He said, "All over Jersey. You can't go over Jersey, because we will take everything away from you." Which I got a receipt and I gave you the receipt.

I am buying poultry today in Philadelphia from farmers —from Rabinowitz sometimes—all around, wherever I can get them. I know Max Solomon, he is the commission merchant in Newark. His company is the North Jersey Poultry Company, Inc. I got their bills here. In September, 1931, he called me up on the telephone several times and he says, "Why do you have to go to Philadelphia and drive all night to get your poultry? You will be able to get poultry from every commission merchant in Newark." So I went over and I said, "I will tell you I can buy poultry by you, but I won't go with my own machine." I went over there and bought poultry from Max Solomon. I followed their truck down along with my touring car. I didn't see nobody. So I told him I am going to take poultry for two weeks but he should deliver to me with his own machine. After two weeks I am taking my own machine. He says he is willing to sell me poultry, that is all. Then the second

week I went over to call for poultry and he said he is afraid for the New York gangsters, and he refused to give me poultry. I bought from Roth Brothers and Holman Company and the North Jersey Live Poultry Company in Newark. Solomon said, the second week, he was afraid of the New York gangsters. He was afraid of Tootsie. He mentioned besides Tootsie Herbert, Charlie Herbert. He said, "The whole bunch I am afraid from them." He told me he would not sell me any more poultry.

I buy all my poultry now in Philadelphia. It costs me about 4 cents a pound more to bring it from Philadelphia.

Mr. Rice: I will read into the record a copy of the receipt which the witness Hecht obtained:

Stephen Walker, Magistrate, Middlesex County, New Jersey

[fol. 604] "April 3, 1931.

Received of Barney Hecht the sum of $37.50 on account of charges having been made against him by George McRea, agent for the S. P. C. A. of Middlesex County, New Jersey.

Stephen Walker, Esq., Magistrate, Middlesex County, New Jersey."

Cross-examination.

By Mr. Perlman:

The Witness: The time that I said men were walking in front of my place with the sign on them "This place is on strike" was in April, 1928 ~~or~~ 1929, I could not tell you exactly, it was only once. That is the same time that I put the signs out in my window that I did not want to sell at 50 cents a pound, and was selling at 33 cents a pound, and buying the poultry at Philadelphia for 28 cents a pound. That was five or six months before I had my talk with Red, the Rahway police officer, about a year or a year and two months after the criminal trial. The trial was in October and November, 1929. That occurrence with the police officer was sometime in October or November, 1930. I am sure about that.

Q. What was the last trouble, if any, that you had with any union, when was that?

A. Trouble?

Q. Yes, any trouble with any union, when was the last time you had any trouble with any union?

A. I didn't have no trouble at all to tell the truth.

Q. You had a strike, didn't you?

A. Yes, I had a strike.

Q. That is the last time?

A. Yes.

Q. And since the strike you have had no trouble with either Local 167, which is the chauffeurs' union, or the schochetim union, isn't that true?

A. I am signed with the chauffeurs' union.

The Witness: Since the strike, which took place in 1928 or 1929 I had trouble with both the schochetim union and the chauffeurs' union. I will say it was about three or four months after the strike. I am sure about that. I did not have any trouble again after that three or four months' period. I did not have any trouble with Local 167, the chuaffeurs' union after that strike. They cut me up the machine, that is all I know. That was in July, about three or four months after the strike. Since that time, I had another trouble. That was about five or six months later. After the strike. Except for the trouble that I had [fol. 605] up to about five months after the strike I have no trouble since that time with any union. I don't want to change that statement.

Q. When was the last time that you talked with any of the Herberts?

A. I talked with them about last year. That was in January.

Q. January of 1930?

A. They called me over to the office.

The Court: Listen to the question. He is just trying to get the date. He was not asking what he said; he just wants the date.

The Witness: January 1931.

Q. That is this year?

A. Yes.

The Witness: I talked to Charlie Herbert. He called me over to the union office. I talked to him about my shochet. The shochet was there and the secretary was there. At that time I had a union shochet. They did not ask the

union shochet to leave my place. I still have the same union shochet. I only have one shochet. He is working for me five or six years. He left when the strike was. After the strike, he came back and since he came back after the strike he has been working for me right along, and he never left me since that time in 1928 or 1929. I testified in the criminal trial, but whether or not I testified about the same strike in the criminal trial, I don't remember,—maybe I testified about the strike in the criminal trial. Whether the strike took place before the criminal trial I don't remember. I had one strike; that is all.

Q. Do you remember being asked this question and making this answer:

"Q. What month was that?

A. That was in April.

Q. What year?

A. 1928. I went over to Newark and bought a little poultry and he came that Harry Shomer and there came a couple of fellows and he told me 'If you are going to get poultry, we are going to kill you.' I said, 'Then I will be dead and won't have to die twice.' That is all I said. That was Easter when they sold poultry for 45 and 50 cents and after I sold my poultry for 35. See what they did to me."

Do you remember saying that?

A. No, I don't remember that.

Q. Here you said you were selling poultry for 35 cents?

A. I don't remember that.

Q. Today you testified that you were selling it for 33.

A. I don't remember; it is so long ago. I could not remember.

Q. Your recollection was better in 1929 when you testi-
[fol. 606] fied than it is today, was it not?

A. Maybe. It is so long. I cannot remember. I know simply he came around one Saturday with a gang and they put two fellows and put signs in front and back, in front of my door and says "This place is on strike."

Q. What month was that?

A. That was April.

Q. The same year?

A. Yes, sir.

Q. Do you remember that?
A. I remember that.
Q. Wasn't the strike then around March or April, 1928?
A. I could not remember whether it was 1928.
Q. You heard what I read?
A. All right, it was in 1928.
Q. The strike was in 1928, was it not?
A. Yes.
Q. That is correct now, is it not?
A. Yes.
Q. So that the next trouble you had with any union was three months after the strike in 1928, isn't that right?
A. Yes.
Q. That is correct?
A. Yes.
Q. And the next trouble you had was about five months after the strike?
A. I don't remember for sure, but I say about that.

The Witness: That strike was in March or April, 1928, when the union schochet left me. He came back the same day that I settled up with the union. After I settled up with the union, they gave me one union schochet. I only asked for one. I got one. I have had one union schochet ever since that time. Charles Herbert is the delegate of the schochetim union. That schochet did not refuse to kill any chickens for me since he returned to me in March, 1928, at the time of the strike. He killed, but didn't come on time. At the time of the strike I did not get union loaders. I had no agreement with Local 167 which had the loaders in its membership. I did not refuse to take union loaders. They did not ask about loaders. He was a plucker, not a loader. The loaders are those who put the coops of chickens on the trucks. I did not employ at the time of the strike in March or April, 1928, any loaders who were members of the union. I only got one plucker, that is all I got. When I go with my truck to the market to get poultry, I have to have the poultry loaded on my truck. Since March, 1928, at any time when I tried to load poultry, I did not employ any union loaders. This plucker that worked for me is [fol. 607] Tony De Steffano. He has worked for me about

six years. He does not drive my truck. I drive it myself. He works in my market. He is plucking chickens. He does not go to the market with me when I buy. When I went to the New York Central at 60th Street to get poultry, I did not take my plucker with me. When I got to the market and took out the poultry that I wanted the poultry would be in crates. I would have the crates put on my truck. I did not have at that time any union loader. I did not have any loader. At the New York Central Terminal, I do not know whether they are union loaders or not. I don't know anything about it. They would not load for me They were also there in the West Washington market. They never tell me that they would not load for me because I would not employ a union loader. I had a loader named Weiss, the loaders' union put him in. He did not go to to the market with me. I did not discharge him . At the time this man Weiss worked for me I did not have De Steffano working for me. I had discharged him. He did not belong to the union. After I discharged him the union sent me Weiss. He worked a couple of weeks and then he went away himself. After Weiss was either discharged or left me, I took back De Steffano. He did not join the union. After I took him back, these loaders of the market would not load for me. I am not now ready to employ a union loader. I am selling 2,000 pounds of poultry; I cannot afford to have a union loader. De Steffano who was working for me in 1929 is still working for me. He is not now a member of the union. He is getting $32 a week. A union loader gets $75 with overtime. I do not know the name of any loader who refused to work for me. I don't know anything about him. They didn't give me a chance. Since the strike of 1928 I never talked to any loader either in West Washington Market or the New York Central market. No loader since March, 1928, or 1929 ever told me that he would refuse to load for me. I did not talk to no loaders. I met a man named Nigger in the New York Central Railroad. That was the same year, I don't remember whether it was 1928 or 1929. It was in March, before the strike. At the time of the strike I saw Benny Simon. I saw Simon and Tootsie in the restaurant before the strike. The only times I went to Newark to get poultry were once before the strike and once two weeks after the strike, and now, once in 1931. The second time I bought it and loaded it up,

[fol. 608] Connolly was there, that was the time I went before the strike. From the time of the strike until recently this year I did not go to Newark to try to buy poultry. From the time of the strike until today I have bought and sold poultry every week right here in New York City, and I have gotten whatever price I thought was fair and reasonable. I paid whatever price the marketmen asked me to pay. All this time I have bought poultry in Philadelphia from commission men and farmers. That is the regular way of doing business, and that is what I have been doing regularly every week since the strike in 1928.

Further cross-examination.

By Mr. Kaufman:

The Witness: I buy the poultry from the farmers in Philadelphia in the market. Farmers come to the market with a load of poultry. Anybody can buy from them. I took this union man Weiss to work after the strike. At that time I had a talk with Arthur Herbert I never told Arthur Herbert that I would make a union man of Tony DeSteffano and pay the costs of making a union man of him.

Further cross-examination.

By Mr. Perlman:

The Witness: I told Max Solomon that I would buy poultry from him in September of this year if he would deliver the poultry to my store. I could not get loaders to load for me now in New York. They will load for me if Tootsie will let them. I don't need no union men. When I sent to Philadelphia to get my chickens the loaders over there loaded for me. I don't know that they are not members of the New York union. No one refused to load for me there.

Redirect examination.

By Mr. Rice:

The Witness: Throughout the year 1930 and 1931, up to the present time, I have been buying poultry in Philadelphia. It cost me 4 cents more per pound to buy there. I have tried to buy poultry in New York in July and August

of 1930. Went to every commission man in New York and they told me "You can't get no poultry because Tootsie won't let you load."

Mr. Kaufman: I object to this, if your Honor please; this is all repetition, why go into that. I object to it on the ground also that counsel is impeaching his own witness. The witness testified that he did not go to the Washington Market in 1930 on his cross-examination.

[fol. 609] Mr. Rice: If your Honor please, I understood he said that he did go.

The Court: He has been very vague about it.

Mr. Rice: My understanding is that he testified in the criminal trial that he was unable to buy from any commission men in the Washington Market or railroad terminals.

The Court: I have the dates so confused from the testimony of this witness that it is difficult to tell just what he did testify.

Mr. Rice: My recollection is it was six or seven months after the trial.

The Court: I think he testified both ways.

The Witness: I am sure this was after the criminal trial, about two weeks, I think. I tried later on again in New York to buy poultry; that was about six months later. I will say about April or May, 1931, I went over there to try to get poultry and I could not get it. In 1930 I just went over to look around; I asked if I could get poultry and they said "No chance to get any poultry." The commission merchants told me "You have no chance because Tootsie won't let you load even if you have got 50 men in your place." It is not the practice on the part of market men to take loaders with them to commission markets. I have never seen a market man take his loader with him. The wholesale man that sells a lot of poultry sends his driver to buy poultry and load it but the retail men, the same as I, they got to always go over there with the machine and the poultry is loaded by the laboring men or helpers working for the commission men, at West Washington Market, and the railroad terminals.

I did not discharge Weiss when he was working for me. He left me. He said "Tootsie told me to go back." I did not see Arthur Herbert talk to him. When Weiss left my place he didn't do nothing at all. He says the few weeks he was standing in the place he come around at half past

seven in the morning, smoked cigarettes; at half past eleven he went to dinner. He came back at half past one and stayed to four and he says "All I have to do is to take your money." I did the work in my place while he was there. I paid Weiss. I agreed to pay him $45 a week. Tootsie brought him in. When the strikers took him away they said "Go ahead, let him work," but he [fol. 610] did not want to do anything. About three months after the strike I came over to West Washington market and tried to buy poultry in my own machine, and they cut up the four tires from the truck. If I would see who did that I could tell you, but I don't know his name. I went to the market again to buy some poultry; I bought a few crates of ducks and chickens and I tied it up with a rope a hundred feet long, and one fellow cut the rope in pieces and he stole a coop of ducks from my truck and I didn't see the fellow until two weeks ago, I saw him sitting over here on this bench. I saw him in this courtroom two weeks ago. I don't know his name. I did see him go around there; the other fellow said, "Go ahead," and when I started to move the machine, he stole a coop of ducks from my truck. That was a week later, I went to the Erie Railroad for poultry and there was Tootsie Herbert and Arkey and Tootsie's brother, Mannie Herbert. He order to put two machines in the back of my machine, and two machines in front; then they started to throw dead chickens in my face, stones, nails, dirt in the face, and they smacked me up the machine on the Erie Railroad. That was a couple of weeks later, August, I think. I cannot fix the year. This was after the strike. That is the trouble that I testified to in 1930 and 1931.

Mr. Rice: But you are certain you had trouble six months after the criminal trial?

A. No.

Mr. Perlman: He didn't say that, after the criminal trial.

Mr. Rice: Yes.

Mr. Perlman: He just said after the strike.

Mr. Rice: Yes, but I am referring to another incident.

Mr. Perlman: I object to it as being too indefinite.

The Court: The witness did testify at one stage; he has testified at two or three different ways.

Q. Are you sure you had trouble six or seven months after the criminal trial?

A. Yes, sir.

Q. And was that in 1930?

A. I couldn't tell you; I couldn't tell you what year.

Q. But you are sure it was six or seven months after the criminal trial?

A. Yes, sir.

The Witness: I went to Newark and bought poultry before the criminal trial. John Conlin came up. I bought ten crates of poultry off of Newman, the commission man. [fol. 611] When he loaded five on my truck, Conlin came up and said "If you are going to take that stuff home, I am going to throw you in the river. You remember, and besides that, I am going to kill you right at once." He got hold of my coat, he got hold me like this (indicating) and he wanted to kill me. I ran into the office and Newman said to me "Please do me a favor, there is going to be some trouble, take your stuff off." In January, 1931, I talked with Charles Herbert. There was my rabbi, as there was a bunch of shochats there. I could not tell you whether the Secretary was there or not. I think it was the man that was over here just now. He handed me the paper. That is the one (indicating Joseph Rosenman). He said to me "You will be able to get poultry in New York from this time on. Don't go to Newark or Philadelphia. Sign your paper and you will be able to get poultry in New York." I mean the contract with the Shochtim Union. So, I did sign and the next day I went over for poultry. Charley Herbert says "What, poultry?" He says, "Can't do it." He said "You can't get no poultry." I did not have any other conversation with Joe Rosenman. I don't know the name of this police officer that I testified stopped me on the highway. They call him "Red." That is all they call him; I know him for a long time. He used to bring me stuff in the place.

Recross-examination.

By Mr. Kaufman:

The Witness: The trouble I had about six months after the trial was with the officer on the road, that is the only trouble I had in 1930. The officer along the road told me

that Tootsie and some other people were going to give him some money for making trouble for me. He told me to tell the people in my neighborhood that I had to pay a $25 fine. I told the Court before that I did tell everybody I paid a $25 fine. I was lying every time I told this to them. I had to do it. I met this officer on the road maybe half a dozen times, who knows. After every time that I saw this officer on the road and went back to my neighborhood, I didn't say nothing to my friends; they asked me "Did you pay $25 again?" I said "Yes, I did." I had to lie to them every time. This officer never made any trouble for me. That was the only trouble that I had in 1930. The only trouble I had in 1931 was when the officers of the Society for the [fol. 612] Prevention of Cruelty to Animals arrested me and took me before a Justice of the Peace, and he fined me. I said nothing at all to the Justice of the Peace. The officer made a complaint against me. I pleaded guilty, and was fined twice. I had to plead guilty because they told me if not I would have to get $500 and bring a bailor and this way I had the money and so I paid it right there. This way I had the money, $27, and I paid it right away. If I plead not guilty I had to bring a bailor and the stuff was before the holidays; I needed the poultry so I had to go and do it. I figured it was cheaper than it was to stand trial. That was with this trouble. I bought poultry in Newark and they refused to give me the poultry in September 1931. In 1930 I had no trouble except "Red" the motorcycle cop, they told me a story. In 1930 I was getting all of the poultry needed. There is no question about that. When I testified before that in 1930 I went to West Washington Market, some time in July or August, I bought poultry.

Q. Let us keep to one year at a time, Mr. Hecht, because I want to understand you. Now, in 1930, did you ever buy poultry in West Washington Market?

A. No, sir.

Q. You testified on examination by the Attorney General that you went there some time during July or August, and you looked around the works; is that correct?

A. I couldn't remember it. What is was I couldn't remember. I tried to buy poultry and I couldn't get it; I tried everywhere.

Q. Let us see what you are talking about. We will take one year at a time, Mr. Hecht. You will take one year at a

time, we will take the year 1930, right now, that is the year before this year?

A. Yes, sir.

Q. Did you get it then?

A. Yes, sir.

Q. I am asking you, can you tell us when, when you went to West Washington Market in 1930, and tried to buy poultry—did you have any trouble? Did you ever go?

A. I did go five or six times during June or July; I don't remember whether I went there between January and June and between the end of July and the end of December, 1930.

Recross-examination.

By Mr. Kaufman (continued):

The Witness: I know a commission man by the name of Kassoff. I never talked to him. I did not tell Kassoff that I was buying in Philadelphia because I could buy cheaper and get a better selection of poultry. I did not see him in the market in July or August, 1930. I saw him before. [fol. 613] During those months I went over to Sam Weiner, a commission man to buy poultry twice and talked to a salesman; I could not remember his name. I also went to Norris's place and talked to the salesman or the bookkeeper; I don't know his name. I went over to Fleck and talked to the salesman; I don't know his name. I went to Norris's place during the months of July and August, about three or four times and the same to Fleck's place. He is next door, he used to be next door. I talked to one salesman at each place. On these trips I also went to Charley Weiner and talked to a salesman; I don't know salesmen's name at all. I never pay any attention to them. I wasn't interested in finding out who was the man who told me I couldn't get poultry. I also went to Sol Frankel four or five times and talked to the salesman. I went to others but I don't remember the names of all of them. I went by the Castle Poultry Company and talked to the salesman; he is dead now. During the months of July and August when I talked to the men as I testified, I was getting poultry in Philadelphia, and after these five or six trips that I made during those months, I didn't go back to West Washington market. I don't remember at all whether I went back to West Washington Market during the balance of the year 1930, after July or August. I got as much poultry as I

needed at Philadelphia. I got good poultry but it cost me three or four cents a pound dearer. I went to the West Washington Market in 1931 to get my poultry. I was there quite a few times. The first time in 1931 that I went to West Washington Market was in January, when I settled with the Union, and the Union sent over that I should sign an agreement for a shochet. Went over and they told me I should be able to get poultry in New York as soon as I signed the agreement with them. The next day I went over to buy poultry and they told me they won't load any poultry. Max Keslin the stopper told me that. He went around and said "No poultry for him," he followed me down every commission house and he said "No poultry." I saw Charley Herbert and Tootsie Herbert was there with him and he told them to follow me, and they followed me down to every commission house and told me "You can never get poultry."

I recall that I signed a contract with the Shochtim Union. [fol. 614] I went to West Washington Market after I signed the contract. I don't remember how many days after it was. This contract which is dated January 5, 1930, is the one I signed with the Shochtim Union.

The Court: Let the contract be marked as identification as Exhibit B for identification; then we will know what we are talking about. What is the date of it?

Mr. Kaufman: January 5, 1930.

Mr. Rice: I object on the ground that there is no evidence in this case up to now that shows in what way a contract between Mr. Hecht and the Shochtim Union would have any relevancy on the issue.

The Court: Over-ruled; admitted.

(Defendant's Exhibit B, heretofore marked for Identification, received in evidence.)

By the Court: Wasn't the contract in January 1930 instead of in January, 1931, as you testified, Yes or No.

A. I think it was only last year in January. That is what I think. They didn't give me a chance to see it. Whether it is the 30th or 25th I didn't read nothing at all. They said "Sign and you get poultry in New York." They didn't give me a chance to get poultry at all.

Mr. Kaufman: I move to strike out the statement of the witness.

The Court: Denied.

Mr. Kaufman: Exception.

Q. You don't know now whether it was in 1930 or 1931?

A. I know it was last year, 1931. That is what I know now.

Q. Now, will you explain the date on this paper, Defendant's Exhibit B as being January 5, 1930 (handing paper to witness)?

A. Well, what do you want now?

Q. Can you explain the date on this contract, Defendant's Exhibit B?

A. I don't know; I don't remember it at all.

The Witness: As to whether it was 1930 or 1931 I couldn't remember that. I know I signed it. They didn't give me a copy; no I just signed it; that is all. I think I signed in 1930 and I think it is 1931; I think there are two contracts. I don't know whether it is 1930 or 1931. I couldn't tell you. I went to the man to get poultry after I signed and I couldn't get no poultry. If the contract says 1930, then [fol. 615] 1930 must be the year.

In 1931 I went to West Washington Market about four or five times during the entire year. I know we are living in 1931 at the present time. I couldn't get any poultry. In January I went to West Washington Market. I told you about a few of those and Max Keslin followed me down. I went to Sam Weiner, Morris Fleck, Hawk, Charley Weiner and Sol Frankel. It is only ten months ago since I called on all of the commission men whose names I have just mentioned, and I cannot tell the name of a single person who I talked to at that time. I went to the market again in July or August of 1931. I have got a pretty good memory. I went over on the New York Central, and there was about 40 cars of poultry. I talked to every commission man, the salesmen that were over there. I talked to Hegeman's salesman Gordon. He is a partner too, and he sold me some poultry. I came over there on the railroad and he said to me "I got a very nice carload of poultry." And I said "All right," and he said "Will you buy a load off of me?" and I said "As much as I need." So I bought 11 coops of poultry off him. They wouldn't let me take it home. They loaded it up on the New York Live Poultry Trucking Company truck and they brought it over in West

Washington Market. I want the Judge to believe that Gordon works for Hegeman and that he sold me eleven coops of poultry, in the New York Central yards sometime during July or August of this year. I think it was this year, I am not sure. I tell you between June or July or August; I couldn't tell you exactly. I am not sure whether it was between July or August or June. It may have been June, July or August. I went down with the truck to West Washington Market. There was a driver, I couldn't remember his name. He is a lame fellow. The truck stopped near Sam Goldstein's place. It did not go over to Hegeman's place. There was more stuff on it besides my 11 coops. It was not taken off the truck when I got to West Washington Market. After the truck got into the market I saw Tootsie Herbert, Max Keslin and Harry Shomer. They called over the driver and they had a talk with him and then my driver turned over to me and he said "Barney Hecht, give me your ticket; you can't get the poultry." I said "Why?" He said "Tootsie says you can't get the [fol. 616] poultry in New York." I said "I wouldn't give you the ticket but I am going up to Hegeman and can't give you the ticket." I put my name there. I went up with the driver to Hegeman's and he saw the same man who sold the poultry, Gordon. The drivers says "Barney Hecht can't get no poultry in New York and you know it well." "You got to take the stuff off." I said "Here is your ticket." I said "Here is my signature, don't ask me for any money for it because I don't take the poultry." He says to the driver "Bring the poultry and I will load it right here on the stand." They took the 11 coops off the truck and put it on Hegeman's place. I told Gordon "Take the ticket." That is all. The two talks I had were, one up at the New York Central Yard when I bought the poultry, and the second talk was at West Washington Market when I complained to Gordon that the driver wouldn't let me have the poultry. I didn't go any more.

Redirect examination.

By Mr. Rice:

The Witness: I signed more than one contract with the Shochtim Union. I think I might have signed one in 1930 and one in 1931. I don't know when I signed the first one.

I remember signing one this year and one last year. I am sure I signed one in 1931.

Recross-examination.

By Mr. Kaufman:

The Witness: I said I signed one contract last year and one this year. I don't know anything about the contract marked in evidence Defendant's Exhibit B, dated January 5, 1930 which is for two years, and does not expire until December of 1932. That doesn't help me to remember that I am making a mistake about the testimony that I gave just a moment ago.

Cross-examination.

By Mr. Perlman:

The Witness: I signed a few contracts.

Mr. Perlman: See if this is the one you signed in 1929; do you remember that one?

A. They didn't give me no chance to look at it.

Q. Did you sign it?

A. This is my signature.

Q. In January of 1929?

A. Maybe.

Q. And the next one you signed was January, 1930, wasn't it?

A. Maybe.

Q. The year after that?

A. Maybe.

Redirect examination.

By Mr. Rice:

[fol. 617] Q. Did you sign a third contract in 1931?

A. Yes, sir.

By Mr. Kroppy: If your Honor please, I would like the record to show my motion to strike out the testimony on all the grounds previously urged.

The Court: Motion denied.

Mr. Kroppy: Exception.

Mr. Perlman: May I ask to strike out that part of the testimony about the motorcycle policeman in *the* Rahway New Jersey.

The Court: Denied; I will give it no respect unless it is connected up.

Mr. Perlman: I make the same motion with respect to the testimony dealing with the charges made against him in New Jersey for violating the Public Health Law.

The Court: Same ruling with the same explanation.

[fol. 618] MAX LEVIT, called as a witness on behalf of the Government, first being duly sworn, testified as follows:

The following testimony of this witness, given at trial in October, 1929, was read in evidence pursuant to same stipulation as in case of other witnesses.

Direct examination:

I am in the hauling business. My place of business is at Philadelphia. I have been doing business there for the last two years. I never met the defendant Arthur Herbert. I do not know who Arthur Herbert is, and I never had a conversation with him. I am sure of that. I did haul poultry for Schechtor Bros.; that was back in 1927; that was around the holidays, if I remember right. I do know someone by the name of Tootsie Herbert. (Arthur Herbert arose.) I believe I met the gentleman. On this occasion he just said in reference to certain live poultry to New York. This happened around September or October, 1927. He just said, if I remember right, he was the delegate of the union and that we were not doing any too good in helping their cause in handling this poultry to New York, and asked me wouldn't it be possible to try and not handle this poultry to New York.

When I had this conversation I don't remember if I was at the railroad or at the market, I don't remember exactly. It was in Philadelphia.

There was somebody with him at that time. I do not remember who it was. He asked me in a nice way to do what I can to help their union along by not handling the poultry. That was the first conversation I had with him. Outside of saying about the handling of that live poultry over to New York that it would be a hindrance to their union, there

wasn't much more that he said. I think he did say that anybody that would come from New York to buy poultry at that time would not have any connection with the union. That is [fol. 619] all that I remember. I did not ship any poultry to New York after that, for a while. I never had any other conversation with Herbert after that, none whatever. I did ship poultry to Harnett. This was quite a while after this conversation. I don't remember whether that was in the winter of 1927 or early part of 1928, I don't remember for sure.

Cross-examination.

By Mr. Sager:

My business is hauling business. I am simply employed to haul poultry. Just before I went on the witness stand nobody pointed out any of these defendants to me and identified them. In this conversation I had, the question of credit was not discussed that I know. I had nothing to do with credits. I brought over such chickens as were entrusted to me from time to time without any hindrance.

By Mr. Kaufman:

I am in the Hauling business myself. I have my own employees. I don't know that I called them union but I know we paid well for our laborers. Herbert did not try to get me to employ union labor. Herbert never told me that some people who were buying live poultry were not using union labor in New York. We never went into that. It was not my business to know that. He just asked me to cooperate with respect to certain people in New York. I testified before that he told me that he wanted me to help out his union. He did tell me that the union was having trouble with some people in New York, and he wanted me and my company to cooperate with his union, and that was the extent of his talk with me; he saw me once. He wanted me to cooperate with him so that he could keep the union rules in force. He said I would be a hindrance if I didn't help to cooperate.

By Mr. Oseas:

I was to do this to help the unions in New York. As I said before, by my stopping handling that poultry to New York would help the union out. And that's all. The last question

Mr. Sager asked me was whether I brought the poultry to [fol. 620] New York without any hindrance, to which I answered yes. That is, I had no interference with any shipment of poultry to New York, outside of that of Harnett. I did say I did have some hindrance. This Harnett occurrence we had interference. We handled some of the poultry on the load going to New York at that time; we were both going to New York. We had three-quarters of a load on the truck and Harnett had come to Philadelphia and bought the poultry and took it back on his own truck. Harnett took some on his own truck and we were going to New York anyhow. That is the only time, in fact. This shipment of poultry that went to New York, some of it came back to Philadelphia. I don't remember saying anything then to Schector, but my understanding was not to handle poultry that might harm the union in any way.

As to the time I had the conversation with an unknown party over the telephone, I cannot say now whose voice that was.

This Harnett poultry, I have just referred to that, I brought over to New York without any interference, I delivered part of it and I brought part of it back to Philadelphia without any interference. I do not know about anything happening to that poultry, about the delivery of it. It came back."

Mr. Kroppy: I move to strike out his testimony on the grounds previously urged by me.

The Court: Denied.

Mr. Kroppy: Exception.

The following examination took place at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I have been hauling poultry from Philadelphia to New York in 1928, 1929, 1930 and 1931. I have not had any difficulty or interference in connection with the delivery of poultry, during the last three or four years.

Redirect examination.

By Mr. Rice:

The Witness: A poultry marketman by the name of Jauvitis did not ask me to haul poultry for him in 1930 that I

know of. I don't know if he was a partner of Aaron Steinberg, but I know I was to haul poultry. I did haul poultry [fol. 621] in 1930 without anybody's interference. I don't recall that Jauvitis came to my place and asked me to haul a truck-load of poultry to New York. I testified at the probation hearings in this building in May 1930. I remember that a few weeks before that, Jauvitis was unable to obtain a load of poultry from Philadelphia; I remember that load now. There was a load of poultry we were to handle over here. The only trouble was it never got here, on account of the money. The merchandise that was bought was not paid for. I have to do with the money, because it is on my responsibility. I had nothing to do with the sale of the poultry, but much of the merchandise we are entrusted with. I act as an agent of the commission man in Philadelphia. I have done it many a time. I am sure that I didn't tell Jauvitis or Steinberg on that occasion that I could not deliver any poultry to New York.

[fol. 622] BENJAMIN ROSENFELD, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a retailer of slaughtered kosher poultry in the Lower East Side. I do not employ any members of Local 167, or of the Schochtim Union. My wife helps me. I have a woman that plucks once in awhile; I have a man that watches the people that go out to see that they don't take anything with them without paying. I opened the store at 231 Rivington Street in 1929. Before that I occupied the market at 80 Jefferson Street. I occupied this market all of the time from 1925 to 1929, excepting for two or three weeks when Louis Weidberg occupied it; then he went back to his place, after they fixed it. He had a fire in his place and I let him go into my place in August, 1928, and he paid $250 for a month's rent; then he went in again and paid another month's rent. When he went there, I could not do business in that market. Louis Weidberg occupied my market a second time in the latter part of

1928. After he had occupied my market the second time, I found a little book with black covers. I could not recognize it by looking at Exhibit 21, but if I could see the original book I could tell what it is. I gave it to you. It did have writing inside—names and numbers. It had one name and then a figure opposite it. I found it on a shelf in the office; it must have been lying there quite sometime; I did not know what it was for. In December, 1928, I went up to you; and in January 17th, 1929, I saw the poultry men were indicted, so the next day I just happened to remind myself of that book. So I got that book; I could not tell exactly what it was all about and who it belonged to and I went to you and gave it up to you.

I recall when the Chamber of Commerce commenced operations in 1927. At that time my place at 80 Jefferson Street was closed. I opened my place after that time. I went up to 204 East Broadway and asked for a schochet. As far as I know, it was the Schochtim Union. I saw Mr. Kalman Shapiro and Joseph Rosenman, a schochet. Kal- [fol. 623] man Shapiro was president and Rosenman was of the Schochtim Union. That was the last part of July, 1927 or July 15th.

I had a conversation with Joe Rosenman at that time. I told him I wanted a schochet from the place. He says to me, "Go up to Benjamin Simon and if he says we could give you a schochet we will give you one." Simon was called the supervisor of the Chamber of Commerce. Rosenman said I would have to promise that I would do no wholesale business. I did not tell him whether I wanted to do a wholesale business or not. I told him I wanted a schochet. After I talked with Joe Rosenman on this first occasion, I went up to Benjamin Simon. I told him my name. I told him where I opened my place and that I wanted to get a schochet; I told him that I was at 204 East Broadway and Mr. Shapiro and Mr. Joseph Rosenman sent me down there to ask for a schochet. He told me he says he could get me a schochet and he would get me one providing I won't do a wholesale business. He said, "Will you promise not to do wholesale?" I said, "I could not promise you anything." Then he said, "You have to take in four men if you want to do wholesale." I answered Mr. Simon, "I only have got a little store for my poultry and if someone

comes in for a coop of chickens I can't refuse, but I don't mean to do a wholesale business." "Sometimes I may be stuck for poultry," I explained, so he said "You go back and we will see what we can do for you." He said, "Go back to the Schochtim Union." I went over there. I talked to Kalman Shapiro and Joseph Rosenman. I said, "Benjamin Simon sent me here and he told me to promise not to do any wholesale;" Mr. Kalman Shapiro and Mr. Joseph Rosenman both were talking at the same time; one was talking louder than the other, and they said that I should not do wholesale business. Joe Rosenman said "You cannot get a schochet." He got hold of me and pushed me out of the office. He did not say anything else at that time. Kalman Shapiro said that if I promised not to do wholesale, at the same time Joe Rosenman said, then they will get me a schochet.

I went up again to Benjamin Simon. I told him if I did not get a schochet, somebody is going to jail, because I didn't see any reason why I should not be able to do business. He said "I will see Tootsie about that. Maybe he will give you a schochet." I saw Joe Rosenman after that [fol. 624] on the street. He stopped me and he says "Well, if you promise not to do wholesale, we will give you a schochet." I said, "I am not going to promise anything and I am going to get a non-union schochet." He said, "If you get a non-union schochet, you will be a head shorter." I saw Benjamin Simon again after I had seen Joe Rosenman on the street, up at 429 West 14th Street. He told me to wait—tomorrow, tomorrow; he kept on putting it off.

I spoke to David Hirshon about this in November, 1927. I also spoke to Charles Herbert in August, 1927. He saw a schochet in my place. So he said, "What is this non-union schochet doing here?" So I said, "You won't give me a schochet, so I got another schochet." There was 23 coops of poultry there and he said at that time, "Get that man out of here," and he tried to fight. I tried to separate him. He shouted "Get that man out of here." "I will get you a union schochet." So I said, "I put him to work and I have to pay him." So he said, "Never mind, I will give you another schochet." So he said he would send a schochet right away and he went to Charles Mirotznik a marketman across the street from my place. One of his schochtim went to my place and then he said, "Don't

say that I left you without a schochet." I had not invited Herbert there, and I was not expecting him. I had employed that non-union schochet about two days after I had those conversations with Simon, Shapiro and with Rosenman; then Charlie Herbert came in. Before there was any conversation, he physically took hold of the schochet and told him to get out. He moved back and I parted him and while I was doing that, he said "You take this schochet out. He is a non-union schochet." He did not strike the schochet.

[fol. 625] By Mr. Rice:

The Witness: After Charles Herbert had taken hold of the non-union schochet, I pulled him away, but he said, "You take that schochet out of your place. He is a non-union schochet." So I told him I was after a schochet for several times, and I wanted to get a union schochet, but they would not give me a union schochet. I was with Benjamin Simon. I was over at the office of the Schochtim Union and they would not give me any schochet. So I got this schochet. So he said if I will take this man out of here he would get me a schochet, so I said, "I got to pay him." So he says to me, "That is all right about pay, we will take care of that," and he said he will give me another schochet. I told him if he will get me another schochet, then I will send him away. After Charles Herbert went away, he stayed long enough for the other schochet that he got from Charles Mirotznik's place to come over. He sent a schochet from Charles Mirotznik's place to come over. I suppose he was a union schochet. He worked for Charles Mirotznik. He worked temporarily until he gets me another schochet to my place. That was in August, 1927. I had a conversation with Charles Mirotznik a short time after the visit of Charles Herbert, when I got another schochet. He came over to my place. He says that if I was going to do any wholesale I was going to be a dead man; and I had better behave myself and don't do any wholesale business. So I told him "Get out of my place." Charles Mirotznik did not say anything about my taking a union schochet. I didn't discuss that with him. I just talked with Charles Herbert about that. Mirotznik did not say anything about taking my schochet away from me if I did a wholesale business or anything of that sort at

all. He said, I wouldn't be able to get any stuff. The second time he came he went in the back room, the killer room, and he was looking around. He says "You got any butchers here?" I said if anybody would come in, I would sell him. Selling to butchers is a wholesale business. Charles Mirotznik said to me "If you do any wholesale business you will be a dead man." He said that the second [fol. 626] time, the first time he didn't speak of any stuff. On the second occasion when Charles Herbert came to my place, he told me "You got any butchers here?" And he went in the back and looked. He said if I was going to sell any butchers, I couldn't get any poultry. I said if anybody comes in my place, I am going to sell him. He did not say anything about taking my schochet out if I sold to butchers. No one else said anything about that.

I talked to Louis Weidberg in West Washington Market. He is a slaughter house man on the Lower East Side. He said that I shouldn't do any wholesale, and if I did, I wouldn't be able to get any poultry. This was a few days after I talked to Mirotznik when I went for poultry in West Washington Market. I told him "I don't do any wholesale anyway, but anyone who comes in, I can't refuse him." My specialty is not in doing wholesale, but if somebody comes in, I can't refuse him. Sometimes when I stock in a coop of poultry or I hear the market has to go down, I want to get rid of the poultry; I want to call somebody in. Mirotznik said whatever Charley Herbert says, you got to do. Mirotznik is a marketman on the East Side. I do not remember having any conversation with Benjamin Simon after I got the schochet.

Two or three weeks after that I had a talk with Simon about something that happened at my place of business. I had a schochet named Jacob Goldwasser. I told Simon that shortly before that a butcher had come into my place who wanted three chickens killed, and that Goldwasser refused to kill the chickens for that butcher. I told Simon that I asked Goldwasser why he would not kill for the butcher and he said he was afraid of Charlie Herbert. That was true what I told Simon. I said to Simon "If I have to promise, I must promise you, that is all." Just before that he said, "You ain't got four men and you can't do wholesale, because you ain't got four men. If you do wholesale you won't get no schochet." Charles Herbert never came

and talked to Jacob Goldwasser. I did not see any union delegate ever come to talk to Jacob Goldwasser. I never heard anyone tell Jacob Goldwasser that if he killed poultry for wholesale customers that he would be taken out of the market. I heard Harry Poppil talk to Goldwasser. He is a brother-in-law of Louis Weidberg.

[fol. 627] Q. What did Harry Poppil say to Jacob Goldwasser that you heard?

Mr. Perlman: I object to that as incompetent. Poppil is not a defendant in this case and no charge is brought against him as a conspirator in this case.

The Court: Overruled.

Mr. Perlman: Exception.

The Witness: He said "Louis Weidberg sent me over here to see if you are slaughtering for any butchers." He said, "I am your friend, but I am getting paid for it." He went over with a spotted horse and wagon every morning. Every day I was going out with a wagon he followed me out of the store. Harry Poppil did not have any other business at my market. That was in the early fall of 1927. I saw Harry Poppil talk to my schochet Goldwasser, but I didn't hear what he said. I do not know of any business that Harry Poppil had with the schochet. In the fall of 1927 I had a retail store on Rivington Street, and a slaughterhouse at 80 Jefferson Street. I had the slaughtering done at the slaughterhouse and it was brought over to the store. The slaughterhouse was at 80 Jefferson and 532 Water Street. It had two entrances. I saw Harry Poppil on Water Street, and at the store afterwards. He followed me from the market to the store nearly every morning when I had a schochet. He did not talk to me when he followed me. He said the first time he came there that Louis Weidberg sent him. He just said to me if I do any slaughtering for any butchers, I will be in trouble. He counted the coops and one time he said "I see you have 30 coops. What do you need so many coops for?" So I said, "I think the market is going to go up and I am speculating with more poultry." He did not say anything about butchers at the time he counted the coops. Goldwasser did not kill poultry for everyone that came in. One time a butcher came in with three chickens that he refused to kill. He said: "I would not kill any for the butcher because I am afraid of Charlie Herbert."

When I went up to the Schochtim office and talked to Joe Rosenman and Kalman Shapiro I said "I want a [fol. 628] schochet." That is all I told them. First Shapiro, and then Joseph Rosenman said, "Go up to Benjamin Simon, and if he should say we should give you a schochet, we will give you one, but you must promise not to do wholesale." My place was closed at the time. I opened up there afterwards. I did not say anything about the price that I was to pay for this schochet. They did not ask whether I wanted a retail or wholesale schochet. They just told me to go up by Benjamin Simon and if he said to give me a schochet, they would give me one, but I must promise not to do wholesale. Nothing was said at the Schochtim Union about whether I was to employ a $45 a week or a $65 a week schochet.

I don't remember if I ever received any letters or other communications from Benjamin Simon. I believe I received a letter I should come up to his office in 1928, in the spring. I went to his office after I received that letter, and talked with him. Charley Herbert was there. There was a big crowd there—Louis Weidberg, Harry Nerenberg, son of Hyman, Charles Mirotznik, Samuel Sahn, and David Hirshon. They were going back and forth in the office. I don't remember talking to Samuel Sahn or Charles Mirotznik. On that occasion Simon asked what I wanted and I said I was closed and I wanted to do business; I wanted to get poultry. He said, "I will see you tomorrow, tomorrow;" he says "Well, if I want to sell I had better go in and see Charley Herbert." He said "Take four men."

In 1927, about November, Benjamin Simon said to me when I came to his office, "I want you to join the Chamber of Commerce." And I says "I am hardly making a living, I just sell a few coops of chickens." He says, "If you want to join you will be able to get any poultry you want." He said "If you don't join the Chamber of Commerce you won't be able to get any poultry." I did join it, and signed a paper. Mis- Levine, a secretary in the Chamber of Commerce gave me the paper. Simon was there alongside of me when I signed. He said "Never mind reading it" and he pulled it away from me. I read that document about a few weeks afterwards. I saw Miss Levine there and I said "Can I read that thing that I signed the other day?" I says "I don't think it will be fair, I want to read what I

signed." She hesitated, so she gave it to me to read. I found my signature there, and I went back in the lavatory and tore it. Then I went right down and I went out. I bought live poultry in the fall of 1927 but not in the spring [fol. 629] of 1928. I tried to buy in the early part of 1928 in West Washington Market from Samuel Fleck & Co., commission houses, L. J. Schwab & Sons, Frank Hellman & Son, George Brown (he is dead now), and Castle Poultry Company. They sold me poultry all the time in the spring of 1928, but I couldn't get it delivered. On several occasions I bought a few coops and afterwards I couldn't get it. The Live Poultry Trucking Company wouldn't receive it. They were unable to load it on the truck, their own men; they wanted the people on the stand to load it and the people on the stand wouldn't load it. That situation continued from the last part of 1927 until the last week or the first week in January, 1928. I have not tried to get poultry in West Washington Market since the criminal trial. I have not been refused poultry since the criminal trial. I have never been asked by Joe Rosenman or Kalman Shapiro for a schochet since the criminal trial. When I was refused poultry in West Washington Market early in 1928, I bought poultry from Harry Wilson & Co., Cincinnati, Ohio. I did not keep a union shochat after I got poultry from Cincinnati. I don't remember what kind of a shochat I had, whether union or non-union. It was a shochat from Cincinnati. I have no market today. I have a slaughterhouse. I don't need a shochat. When I sent for poultry to Cincinnati, Ohio, that poultry was delivered to my market. There was interference with my poultry by Charley Mirotznik; next morning; not at the time it was received. He came over and he wanted to tear off a tag from the coops and I chased him away. He says, I wouldn't do no business. That is all. He is going to see I wouldn't be able to get any more on the outside. The next morning Harry Poppil came over to my place and said he was sent by Louis Weidberg and he has got to take care of his job and I shouldn't do any business. Sidney Rosenstein and Mor Rosenstein came to my store when I was sorting out the poultry; they went right in the back room. They followed me from the wagon; maybe I took the poultry to the store. They didn't say anything. When they went out there was a sergeant there, I told him "These fellows, see them there." I got

scared. "Look at those fellows here, what do they want here." So the Sergeant told them to beat it. They had no business there at any time at all. I had no union men in my retail store. They don't use a shochat in a retail [fol. 630] store. Harry Poppil said that Louis Weidberg sent him over to see that I shouldn't do any business, and I shouldn't sell butchers. That is everything he said. He said if I did sell to butchers that he would get me out of the way.

I know defendant Frankel. I talked with him in the office of the Chamber of Commerce in the early part of 1928 or the latter part of 1927. I said "Why can't I get no poultry." He said "You can't get any poultry here" and he hit me right over here (indicating), and he said "Get out of the place."

I know the defendant Dave Hirshon. I talked with him at the same time and same place. He raised his hand to me "You go out and get poultry, you worked for Baff and get poultry."

In March, 1928, I was buying slaughtered poultry for my retail store from the marketman on the East Side. I bought where I could get it. I was sold by Nerenberg, Finkelstein, and by Frankfater Brothers and by Plotkin & Zimmering. In the early part of 1928 I was told where to buy my poultry by Louis Weidberg. He told me the first killing in the morning I should go to Nerenberg. On the second kill I should go over to Frankfater Brothers, Hyman and Jacob. The first time I did it at the Nerenbergs and then I went over to Hymie Frankfater or to Charley Finkelstein. Nerenberg charged me above the market quotation five cents and Frankfater charged four cents. Some poultry is worth less. They charge today above the market quotation about 3¢ a pound, or less.

I know Louis Stalk. I had a conversation with him in 1927 or 1928 in West Washington Market. He said to me "You want to listen to Charley Herbert." "And you want to behave yourself." He said I should listen to Louis Weidberg. I saw him a number of times; he told me if I don't behave myself I would be a dead one. That was in the spring of 1928 at 429 West 14th Street, they were playing cards at that time.

On June 22nd or 23rd, 1929, I was employed by Louis Weidberg to charge the poultry. At that time there was

an organization in the East Side among the marketmen called L. W. Credit Association. L. W. is Louis Weidberg. As I understand it he was the head of it. The members of it were Charles Finkelstein, J. Wernick (he went in with [fol. 631] Charles Mirotznik who was a member), Jacob and Hyman Frankfater, Hyman and Isidore Haber, Abraham Wolf, Gramercy Live Poultry Company, Howard Live Poultry Market, Kosansky & Chasinsky, Morris Chasitz, and Pitt Street Live Poultry Market, composed of Samuel Isaacson, Isaac Lipshitz, Simon Lapoff, and a man by the name of Goldberg.

Q. Do you know what the function of the L. W. Credit Association was?

A. Yes.

Q. What was it?

A. That they allotted to marketmen to sell a certain amount of poultry. Now, suppose one market—

Mr. Kaufman: Now, I move to strike out this testimony; apparently it is unquestionably a conclusion of the witness. He said that people were allotted certain things.

The Court: Over-ruled.

Mr. Kaufman: Exception.

A. Each marketman was allotted to sell a certain amount of poultry. Louis Weidberg was the one that dictated it; a fellow by the name of Moe Cohen was an accountant, and Charley Shoenzeit.

Mr. Kaufman: I move to strike it out.

The Court: Over-ruled.

Mr. Kaufman: Exception.

Q. What did it do?

A. I want to finish this. A marketman was supposed to sell 20,000 pounds of poultry. Now, if he sold 5,000 more than 20,000, then he has got to give 4¢ a pound into the L. W. Credit Association and to give it to either Moe Cohen or Charley Schoenzeit.

The Witness: Louis Weidberg put in each market a charger, or watcher. They called them watcher that time. I was one of them hired by Louis Weidberg. I was paid $35 for that week. I was sent to the market of Charley Finkelstein and Schwartz on the East Side. Louis Weidberg told

me I should take the weights of the poultry in that market, when they put the poultry on the scale. I should take the number of pounds down, who buys it and after each day I should add up the number of pounds and bring up a copy of that to the office of the L. W. Credit Association and give it to Charley Schoenzeit or Moe Cohen. I wrote down the name of each one that purchased. I didn't keep track of customers that come in; sometimes the customers came in and did not buy. I didn't keep track of all of them. I did not do anything else in the market. There was one watcher for each market; I do not know whether they did the same [fol. 632] thing that I did. They told me they did at different markets. If a marketman was allotted a number of pounds to sell each week, if he sold above that much, that number of pounds he was supposed to turn in 4¢ a pound to the L. W. Credit Association. Benjamin Altman was, I think, assistant to Louis Weidberg; he was the whole fellow there. He went around to see if each one was all right and try to straighten it out. Maybe they kicked, they didn't sell enough poultry. I know at one time he came around to Charley Finkelstein's who was kicking; he wasn't selling enough poultry and he says "We will straighten you out." Of course, some of them didn't sell enough, they get money. Those who sold under their quota, were supposed to get 4¢ a pound up to their quota. Louis Weidberg told me that. Whether or not they received that amount, I don't know. Hyman Nerenberg was receiving money from the L. W. Credit Association—$100 a week—for keeping closed his market. That was after June, 1929.

I know David Kaufman the delegate from the union, and Harry Shomer. In the summer of 1929 he brought in two more men into Finkelstein's market, I don't know who they were. Finkelstein was a member of the L. W. Credit Association at that time. He went in the beginning and after that he was kicking that he did not sell enough poultry. He left the organization for a short time. It was at that time that David Kaufman and Harry Shomer came in with the two men. They said "Take the two men to work if you want to straighten out, we will take the two men out." When the two men were sent to Finkelstein's market I was in the Pitt Street Live Poultry Market, and I said to Isaac Lipshitz, "It is a shame to give him four men." I said he did not need it. So Lipshitz said if he

joins with us together we will take the men out. He did not say anything else.

Cross-examination.

By Mr. Kaufman:

The Witness: I was a witness in a case when Sam Weidberg assaulted me in 1929 in the Market of Louis Weidberg. Sam Weidberg is the son of Louis Weidberg. Up to that time I was Louis Weidberg's friend. I did not have a dispute with Sam Weidberg. He attacked me without warning. I went that same day to the Magistrate's Court and asked for a summons. So the Clerk asked for five dollars, otherwise he would not give me a summons. So the next [fol. 633] morning I said I would not give five dollars, so I went to Mr. Rice and he sent two men over there and I had five dollars with me which I had marked and it was lucky that the other men gave the summons. Sam Weidberg first spit in my hand and says, "You are going to put me behind the bars?" So without warning, he attacked me four times. He hit me in four places. One on the head, one over here (indicating), one here and one here, where I had a black eye. I was very angry then, so angry that I went to the Essex Market Place Court. I asked for a warrant and he said he could not give me one because I had no witness. Then I asked for a summons, and he said "Where is your witness?" And I said "I have no witness." I said I did not have a witness with me. I stated to the Judge that the Clerk in the Magistrate's Court wanted me to bribe him with $5 before giving me a summons. When the Clerk did not give me a summons I went over to Mr. Rice and he sent two officers to the court. I then got a summons and served it on Mr. Weidberg. There was a hearing before the Magistrate on September 20th, and Weidberg was discharged. After he was discharged I was still angry at Weidberg and at the Magistrate too. That Magistrate positively did not give me a square deal. I was also angry at Louis Weidberg because he was the cause that I could not have a slaughterhouse and not being able to get poultry or a shochet. I testified before that I gave up my slaughterhouse because I had to. I closed my slaughterhouse at 80 Jefferson Street the latter part of 1927. I kept it practically closed except on one or two oc-

casions when I took poultry in, so that they should not know where I was getting it from. I gave over the lease to William Simon. During the year 1928 I opened up that market as many times as I could get poultry. It was one or two times, maybe more. That is all in the whole year. I transferred the lease to William Simon in April, 1928, and William Simon opened up a market at 80 Jefferson Place. It was either assigned or subleased with the understanding that I was supposed to work for him. When I said I opened up the place once or twice in 1928 I meant once or twice between January, 1928, and the time I transferred the lease to William Simon. After I transferred the lease to him I worked for William Simon about a week and a half. He [fol. 634] closed the market.

The place was bombed on May 6, 1928. I was not there when the so-called bombing took place. I was there in the morning when the place was opened and there were fire engines there and the police were there and the lock was broken open, and it was reported there by the Bombing Squad of New York Police that the place was bombed. Because there were police there and there was an explosion I say the place was bombed. Whether some of these defendants had something to do with the bombing I could not say anything about that any more than you can. Then I took the place back. I had a contract with William Simon for a year, but it wasn't in writing. They fooled me too. They were going to make it in writing and they kept putting me off, tomorrow, tomorrow. I repaired some of the place after the accident that I referred to as a bombing. I did not reopen the place. I kept it closed the balance of the year 1928. I did not have any store until the last week of February 1929. I gave up my chicken store in Rivington Street in the spring of 1928, either in March, April or May.

Commencing in January of 1928 and ending when I closed the chicken store in May of 1928 on Rivington Street, on one or two occasions I got my poultry in Cincinnati. That was live poultry. I had it slaughtered by me at 80 Jefferson. Slaughtered poultry I bought from Hyman Niernberg, Frankfurter Brothers, Charlie Finkelstein, and I believe Plotkin & Zimmerman. There were four places that I bought from. First I had to go to Niernberg; Louis Weidberg told me I must go there first. He told me by Frankfater Brothers and Charlie Finkelstein. Nierenberg sold

me all the poultry I wanted. Frankfater did not. The other two people sold me all that I needed. Frankfurter refused to sell. I should go first to Niernberg and if Niernberg said he should give me he would give me. Niernberg sold me all the poultry I needed but it was not the right kind of poultry. Plotkin and Finkelstein sold me all the poultry I needed when they had it. When they did not have it, I went to Niernberg, when Niernberg wanted to give me trash and [fol. 635] charge me higher prices. He had better poultry, but he would tell me that it was sold. He said it is not for you. I am angry at Niernberg. He did not treat me right.

[fol. 636] Bernard Glasberg, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

[fol. 637] The following testimony of Bernard Glassberg, given at a former trial in October, 1929, was read in evidence by stipulation as in the case of previous witnesses:

Direct examination:

The Witness: I was in the live poultry business from February, 1928, until December, 1928, under the name Wolf & Glassberg, Inc. The owners of that business were Abraham Wolf and myself. Our firm was a member of the Chamber of Commerce. I did not attend any of its meetings but Mr. Wolf did. I asked him what was going on at the meetings. He told me things that went on in the West Washington Market, about prices and conditions. He said that we were going to get a new customer into our place, a fellow by the name of Nierenberg. He said that was one of the things decided at the meeting. Nierenberg came in after and wanted to buy poultry from us. He also said Nierenberg was going to come in and bring some of his customers to our place and buy poultry from us. We arranged to pay him $300 a week for that; we deducted it off Nierenberg's bill for about five or six months.

He did not tell me what was happening to Nierenberg's other customers. About five or six came to us. Our firm did not make any other payments during or before this period aside from the $300 a week. Those customers bought from us most of the time; sometimes they went away, didn't like the stuff. When I told that to my partner, he notified

Nierenberg he went to look where that customer brought the poultry, because we gave him credit. The customers always came back to us after Nierenberg was notified, unless there is a certain reason he didn't like the poultry. I mean, [fol. 638] sometimes they came back and sometimes they did not.

Cross-examination.

By Mr. Sager:

The Witness: I was in business with Abraham Wolf from about February, 1928, to December, 1928. We had a place of business on the East Side. We had a lease and were paying a big rental. When we went out of business, I left our books in the safe. We had a lot of unsettled accounts, bills that we owed. Mr. Wolf assumed this lease and the debts of the partnership, about $20,000, and I was released entirely.

Mr. Wolf told me about different meetings, and as a result of some of those meetings we bought somebody out, who turned over a certain number of customers to our concern and we paid him so much a week; that was the understanding. From time to time one or more of those customers might leave us for a day or two and see what they could do elsewhere. Some of them came back to us because they liked our poultry best. As to these meetings Mr. Wolf talked about, he didn't say there was any meeting of anybody or firm or corporation; he simply told me that in a meeting of the men around the market place these things were discussed.

By Mr. Oseas:

The Witness: Not all of them came back; I said a few came back the next day. We had better poultry. They came back because they owed us money. The poultry was good, too. They came back the next morning, and said, "This is good poultry, this is what I call good poultry."

Mr. Kroppy: Same motion.
The Court: Same ruling.
Mr. Kroppy: Exception.

[fol. 639] The following testimony was given by the witness on this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am a retail poultry dealer. I was out in 1927 until February 1928 when I went into business again until November 1928. I again resumed business the last week in May, 1930, and have since then been in business continuously to the present time.

Since May of 1929 I have not had difficulty in buying poultry, and I do not know anyone who has. When I went out of business in November 1928 it was by reason of private affairs with my partner.

By Mr. Rice:

The Witness: I was a partner of Abie Wolf on the East Side. I was a wholesale market man, and a member of the Chamber of Commerce in 1928.

I made contributions to Louis Weidberg and Charles Mirotznik who were collectors of the east side. We did not pay it; we took it off the bills from the merchandise, that is the way it was paid. How much a week I don't remember.

By Mr. Kaufman:

The Witness: In 1927 I was not in business. I had no trouble in 1928.

[fol. 640] HARRY FINKELSTEIN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Same stipulation was made with reference to this witness as to the other witnesses.

[fol. 641] The following testimony of Harry Finkelstein, given at a former trial in October, 1929, was read in evidence pursuant to stipulation as in case of other witnesses.

Direct examination:

The Witness: I am a butcher located in Coney Island, for eight years. During the summer of 1927 I bought poultry from Gerber & Klieger and also tried to buy from

Herman and Al Berman. I bought stuff by him two days. After the two days Klieger called me back to go to him and I went back. Sunday morning I bought of Berman and on Tuesday I went back to Klieger, and on Wednesday Herman Berman came to my store and asked me to come to him to buy and I must give him my hand, honest word, I will be in by Thursday morning in his store. On Thursday morning I came to Berman's place to get stuff. I asked Herman, "You can tell me the price?" He said, "I am very sorry, you cannot get by me a dollar a pound stuff, you belong to 8th Street, because you kill there, you cannot get by me for no money." I said, "I cannot go there; you took my honest word and you have the stuff ready." He said, "I cannot help you, you can't get by me stuff, you belong to 8th Street."

I went to 8th Street. I called Thursday and Friday on 8th Street and Sunday morning I went to Fourth Avenue, Brooklyn, and 1st Street. One is Markowitz, I remember. The other one I don't remember. I kill there Sunday, Monday, Tuesday, Wednesday, and on Friday morning. As soon as I start to kill my stuff I see four men. The men went in the market and told the marketman not to give me stuff. The marketman told to Mr. Markowitz, "Don't give him stuff." Markowitz said, "He owes me money for the few days he called before, and he killed me a little bit. This time I need to have more, and I killed a little bit. Sosnik [fol. 642] killed stuff before for me." I do not know who the four men are that came into the place that time. Sosnik was killing stuff. He took a package with a cop on the beat to follow him because the four men don't let him take the stuff out of the market at Fourth Avenue and 1st Street. I had the stuff killed. The man before that killed, and they don't let him take it out. He took a cop with a taxi and took the stuff off. I went and bring the taxi to the market to take the stuff. The four men told him not to take, and he went away. I took this three packages until the cop came back that followed the first man. The cop followed me, and I went home.

I killed a few days by Klieger & Gerber, and after that I went to Middle Village, Long Island, to Mr. Kruger. I killed by Mr. Kruger two days, Wednesday and Thursday. On Friday morning, as soon as I came I saw a machine there. I look and there is Arkie Weissler. As soon as

Kruger opened the place, Arkie went in and told him not to give us stuff, and Mr. Kruger told him he cannot do this, because he has got money of all the creditors, that for a few days before they didn't pay him for the whole amount, I must give him. Mr. Arkie said go in the office to call somebody. I told another man that was with me to call a police. He didn't have a chance to call because Mr. Arkie was in the office. After Mr. Arkie left t office I sent a man to call the police and it didn't take fifteen minutes there came a few officers and detectives, and the officer asked him to leave the office. He don't want to leave the office. The officer give him a few smacks in the face and after they made a charge against him in the court. The trial was on Wednesday—the same week there in Middle Village.

At the time I was buying from Klieger & Gerber I was [fol. 643] paying them for poultry sometimes 12, sometimes 14 cents above the market quotation. I never spoke to them about the prices they were charging. They used to weigh up the stuff and we would go home and pay the bills. I told him I couldn't stay because I couldn't pay so much. He said, "Any place you go, you must come back, because you wouldn't get."

After this I went to 38 Taylor Street. I know the address only. I called there about two weeks. On Thursday morning I came for stuff and I find the market is closed. I went to the apartment where he lives. I saw him come down. He had a bandage on the head. Next I went to Mr. Mike, on Hope Street. I call there three days, and on the fourth day, on Friday morning, as soon as I kill my stuff I see two men come into the place. I don't know the men. This morning I get and the next day they don't give it. I ask why they don't give it. He say they stop him off the stuff. After this I went to Sam Davis in Union Hill, New Jersey. I kill there about two weeks in September. And after they didn't have for me stuff, I ask him why. He said they stop him off. He said he can't get stuff, he hasn't any to sell. After that I tried two other people in Jersey City. One I kill two days and the other four days. They stopped him off. I ask them why. They said they stop him off, he can't get stuff. I went to 3rd Street, Jersey City, Mr. Steinberg. I called there about two or three weeks. On Thursday morning I was inside. The door was locked. I heard

somebody knock on the door. I see there is Moe Rosenstein by the door. He used to be a nice man. I know him twenty years. As soon as he came inside, he said, "Boys, go home, you can't get stuff here. Steinberg, you wouldn't get stuff for him," and after Moe went to the phone he called up and say, "Mr. Scull, I got them, I catch them," and he started to talk to me, "Finkelstein, I know you for a long [fol. 644] time; you get good treatment; go home; you get stuff in Coney Island." He took me home in his machine. He was with another man. I can't remember that man.

Then when I called a few times again by Klieger & Gerber, I went in 49th Street, Utica Avenue, and killed. I don't know the name, because I paid cash. Once on a Sunday morning I came to that place and the market is closed, according to the Sunday law. I went back to 8th Street to ask maybe they sell me stuff. I came in the market 6 o'clock. I ask Joe Scull I will get stuff. He answer me, "All right, wait for your next." I waited until 8 o'clock. They were finished all the killing and nobody was left in the market. I said, "Give me stuff." Joe Scull told me, "Leave it for tomorrow, don't kill today, tomorrow if you promise me you kill the whole week I will give you stuff," and I went home without the stuff, and I keep closed my place. I didn't sell chickens that Sunday. I didn't have the stuff. Only this day, Sunday morning. I remember it was in January. After that I kill in Coney Island. Sometimes I went outside to kill and sometimes I kill in Coney Island, if I get stuff. If not, I must kill with Klieger & Gerber. I kill all the time in this place since that time, except for a few weeks I kill by Harrison Brothers.

Klieger & Gerber started to charge less about six or seven months before the present time. Now they charge sometimes four, five, six, eight—I don't know direct how much they charge. On chickens they charge cheaper; on broilers they charge more. I told Mr. Klieger that I was going to complain about him because of the high prices he was charging. He say he can't charge cheaper. I told him once I had a statement by the District Attorney for five people want to buy from somebody, lots of stuff, and they [fol. 645] didn't sell it. I told him about the statement. He said, "I am not afraid of this, because the District Attorney get money." He said the District Attorney gets about a thousand dollars and he is not afraid from him.

Cross-examination.

By Mr. Jacobson:

The Witness: I was dealing with Gerber & Klieger. From Gerber & Klieger I went to Berman's place in July, 1927. Mr. Berman refused to give me stuff. He told me he cannot give me for no money, I should go to Klieger & Gerber. I owed Gerber & Klieger Monday the bill and I went to Berman on Wednesday. At the time I went to Berman I did not owe Gerber & Klieger any money, except for one day, Tuesday. They get paid by me after the week, and everybody likes this. I don't remember how much I owed; a little bit. Then I went to Markowitz, 1st Street and Fourth Avenue, from Sunday until Friday. Then I went back to Gerber a few days. I went there at one time in January, 1928, and these occurrences in Jersey happened a few weeks before that time. I didn't give Gerber a note for $300 at this time. I gave him a note in 1926 when the butchers started an association. When I went to Berman the note was paid up already.

I was a member of the Retail Butchers' Association in Coney Island. I was on a committee that went to the marketmen in 1927. Mornick was one of the committee. We went to the Coney Island marketmen on a Wednesday. We knew Thursday was the big killing day in that business. When that committee went to these marketmen we saw Scull, Harrison and Berger. We knew that they had already bought their poultry for their customers, ready to kill it the first thing Thursday morning. I didn't tell them I would not buy any of those coops unless they would give me back a cent a pound; that is not the reason Berman refused to sell me poultry; this was eight months later, when [fol. 646] Berman refused to give me poultry, I was on the committee eight months before, about October, 1927. I did not go to him many times because he refused me. He told me, "You cannot get poultry for a dollar a pound; go to 8th Street; you belong there," and I went there. I only went once that he refused. I bought poultry from him four days before this. I bought Sunday and Monday and this happened on Thursday morning.

I and a few other butchers, including Mornick, went over to Jersey and bought from a man named Davis about September, 1927. We bought from Davis until he had no more

poultry. I bought from him four or five weeks. I don't know that the reason Davis had no more poultry was that he failed; maybe he failed; he told me because they stopped me. At the time I gave that note to Gerber he was connected with Joseph Scull. The note was endorsed by my wife and my grocer.

By Mr. Kaufman:

The Witness: I have known Mr. Rosenstein for twenty years. I knew him when he was working in the market. When I saw him in Jersey he did not let me kill there. I was to go back with my car then and he told me, "Come, come, sit down; I will drive you home," and he took me home. At that time I was a member of the Kosher Butchers' Protective Association of Coney Island. I don't know whether Moe Rosenstein ever worked for our association. I saw Moe Rosenstein in Jersey City about 1927. I saw Arkie Weissler in Mr. Kruger's place, Middle Village. They had three charges against him in the court. One charge was that he didn't have a chauffeur's license. The second charge was that he didn't have his credentials, and the third charge that they found an ice pick in his pocket. I do not know what happened on that charge. They did not call me; they called only Kruger in the court, the mar-
[fol. 647] ketman. I did not know anything about those charges except what the policeman told me. Arkie sent away the truck which I paid $25. He told the truckman to go away and the truckman went away with that money.

Mr. Kroppy: I make the same motion to strike out the testimony of this witness as I made to the testimony of witnesses, Sandler and Bernklau.

The Court: Same ruling.

Mr. Kroppy: I want the record to show my objection to these last three witnesses, on the ground that their going over to Jersey for poultry was sporadic and does not constitute interstate commerce, and also on the grounds that the sales intended to be made by men in Jersey City to them did not constitute interstate commerce.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 648] The following testimony was given by the witness at this trial:

Direct examination.

By Mr. Rice:

The Witness: I was a butcher in Coney Island. I just left Coney Island on the 17th of this month and now have my business in Brooklyn. I paid 6 or 7 cents per pound above the market quotation in September and October 1931. Sometimes I got the quotation; sometimes I did not; then I didn't know. I paid the same in September and October of this year as before that time.

I attended one meeting of retail butchers in Coney Island on October 28, 1931. It was held in a synagogue. There were all the butchers and the wholesalers from Coney Island and Sheepshead Bay, but not Borough Park. The marketmen of Coney Island who were there are Abe Harrison, Sam Harrison, Morris Gerber, Joseph Scull. The Bermans were not there, they went out from business. The retailers asked Scull why he sold poultry to the retail butchers dearer than to the chicken dealers. He said "It isn't your business. It is my business. You cannot tell me what I should do; from the butchers what I should take or from the poultrymen what I should take." I don't know how much Joe Scull was charging above market quotation at that time. I did not buy from Joe Scull, I bought from Abe Harrison. He was charging five, six or seven cents; it was not all the time one price.

At the meeting the president asked Abe Harrison how much is he going to charge for the butchers and how much is he going to charge for the chicken dealers. He told him that for the butchers he will charge 5 cents kill straight—as for the chicken dealers, that, he said is nobody's business. He will do what he wants. Abe Harrison said that he would charge whatever price he wanted to charge. The president of the retailers' association, the vice president, were willing to give 5 cents a pound to kill straight, and the chicken dealers will pay a cent less, and Harrison said that is nobody's business, he will charge how much he wants. Not all the market men were charging one price. They all charged the same price to the butchers, but not to the poultry dealers. Somebody charges cheaper and somebody charges [fol. 649] more. Neither Joe Scull nor anyone of the Harrisons said anything about an agreement. They did not say anything else about prices.

Cross-examination.

By Mr. Perlman:

The Witness: I am a butcher. I am not a member of any association. I don't know of any retail butchers' association. The retail butchers in Coney Island and Sheepshead Bay buy and sell meat and poultry. They do not buy selected poultry. There is a chicken dealer besides the butcher. The chicken dealer buys and sells only poultry, no meat. The retail butcher and the chicken dealer both buy from the marketmen. This meeting in that synagogue was called by the retail butchers, not the chicken dealers. The chicken dealers did not come to the meeting. They were invited, but they did not come because they were not being hurt, but the butchers who were being hurt, invited the chicken dealers and the marketmen to come to meet with them. At this meeting the retail butchers wanted the marketmen to charge the chicken dealers more than they were charging them, so they should be able to charge the butchers less. They were taking from the chicken dealers 4 cents, so they would be able to take from the butcher five. If they took from the chicken dealer 2 cents, they had to take from the butcher 6 or 7. That was the reason for the meeting. This the marketmen refused to do, and stated at the meeting that they would charge people whatever they pleased. The marketmen refused to agree with the retail butchers about fixing the prices that would have to be paid by the chicken dealers.

Mr. Kroppy: All this testimony, if your Honor please, relates to intrastate transactions so I move to strike out all of this testimony on the ground stated and also on the grounds previously urged, that it is incompetent, irrelevant and immaterial.

The Court: Denied.

Mr. Kroppy: Exception.

Cross-examination.

By Mr. Perlman (continued):

The Witness: Nothing was said at this meeting of the retail butchers about unions. No representative of the union or a schochet, or a loader was there.

[fol. 650] TONY DI STEFANO, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony of this witness, given at a former trial in October, 1929, was read in evidence by stipulation subject to objections and exceptions as to its competency and materiality.

[fol. 651] Direct examination:

The Witness: I have been working for Barney Hecht three years. I remember some time a little before Easter in 1928 going with Hecht to Newark, New Jersey for poultry to a man named Newman. We had four coops on the truck, and a man came in and said he was a delegate of the union and he wanted us to put the stuff off the truck. So Newman told him, "What is he doing for it?" And he says, "I can't help it. You have to call up Tootsie and tell him about it." So they called up Tootsie. After the telephone call, Newman came out and he told me and my boss to take the stuff off the truck. And the delegate told us, "You had better lay off or there will be trouble if you don't be careful." He was going to throw us in the river. The delegate was Mr. Conlin. After he talked to us, we took the poultry off.

Cross-examination.

By Mr. Kaufman:

The Witness: I worked inside and outside—on the truck, too. I did not belong to the union. I promised to join the union but I did not join.

By Mr. Mehn:

The Witness: It was some time before Easter, 1928, when I was over in Jersey with Barney Hecht, my boss.

Mr. Kroppy: I make the same motion to strike out also on the ground that it is not binding on any of the defendant marketmen in this case.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 652] The following examination took place at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am working for Barney Hecht. I am working for him in 1927 and 1928. I am a chauffeur lodgeman. I work around inside and once in a while I go to Philadelphia for stuff and help load the truck.

I remember when Barney Hecht made an arrangement with the union for me to become a member of the union. Three or four years ago. I was not a union man at that time. I wanted to join the union. That was after I was discharged by Barney Hecht and they put in a man by the name of Weiss in there from the union. He was there for three weeks, then I asked Hecht for my job back again and Hecht said that he would arrange for me to become a member. Then I went to the union with a friend of mine, when some one from the union came over to Hecht's, they came over to see me. Then I and Hecht and the people from the union had a talk about Hecht making me a member of the union. Then Hecht didn't keep his promise to make me a union man.

Redirect examination.

By Mr. Rice:

The Witness: I deny that anyone told me that in the event that I was called here that I should turn everything upside down.

[fol. 653] Sidney Aronshick, called as a witness on behalf of the Government, first being duly sworn, testified as follows:

The following testimony, given at a former trial in October, 1929, was read in evidence pursuant to Stipulation as [fols. 654 & 655] in the case of previous witnesses.

Direct examination.

By Mr. Oseas:

I am now in the butcher business three weeks. Before that I was in the poultry business about five years ending April, 1929, selling slaughtered poultry. My last place of

business was at 941 East 180th Street, beginning some time in November, 1927, and ending in April, 1929. I bought my poultry when I first started in business at that address from Schiller & Levy, 417 East 93rd Street. (Witness identifies both defendants.) I stayed with Schiller & Levy about four weeks, up to November, 1927. Then I went to Kalman Gross at 967 Longfellow Avenue. He charged me, when I first bought from him, about three and four cents a pound, up to five cents above the market quotations for about two months; then he started to charge from seven to ten cents a pound above the market. At that time he said expenses were too high and he had to pay so much to workers and everything else, and he must charge a little more.

After that I went to Schiller & Levy. I got poultry there a couple of days. Then I went back to Gross again because it was too far to go to Schiller. Schiller did not refuse to give me poultry. I also tried Joe Mines, on 75th and Avenue A, just a couple of times; he gave me poultry. The third time he was afraid to give me poultry; he said he was watched by somebody, that he cannot sell me any merchandise. When he did sell me poultry, I always took it in my own car. He left poultry for me in a butcher shop on 76th Street because he was afraid to sell it to me direct from his place.

I remember being followed by a taxicab in July, 1928. I went to call my partner on Boston Road every morning to go to a chicken market to buy poultry. As I stood waiting [fol. 656] for my partner, someone stood across the street watching me. I didn't know about it. As I pulled away to go to the market, my partner noticed this taxi following us. Nobody was in the cab, just one man driving the cab. I said, "Take the number of the cab and we will report it to the police station." I fooled this taxi, I went around the corner in order to lose him, I went around the corner to Westchester Avenue, and finally I met him there again with Irving Yarmouth, Gross' partner (Witness identifies Yarmouth.) He spoke to Irving and finally I went away with my car to 163rd and Hunts Point Avenue. He cut in ahead of me and said, "Don't go any further; I will break your neck." I got an officer and the officer wanted to know what it was about, and the taxicab driver went away. I couldn't get him.

I was followed another time by Irving Yarmouth and Alter Kupersmith. Kupersmith was also a partner of Mr. Gross at that time. I was buying my poultry when I was followed, at several places. I remember being followed one day when I went to buy from Joe Mines. Somebody followed me. I think it was Irving. I don't know what he spoke to Mines, but the second time I couldn't get any poultry there, that is, I didn't go to get poultry in that market any more.

I also tried to buy from the Heights Poultry Market in Jumel Place. I went there and got my poultry from the first day, and the second day I was followed by Irving and another man in a car with Irving, and he walked in there and told him not to sell me any poultry. I wanted to get an officer to have him arrested, but could not get an officer. The name is Kusinitz. I asked him to sell me poultry and he told me a long story. He says he has a fight with some customer and if he don't get the customer back he will sell me all the poultry I want, and if he does get the customer back he will give me a place where I can get my poultry, I [fol. 657] will have to go back to Gross and get my poultry in a good way. He sold me for a week or so. Then Saturday night he told me a long story, he should not sell me any poultry because he said his brother is threatened in Washington Market with his life, so he will not sell me any more poultry.

I went back to Mr. Gross and I got poultry, of course, but it was not what I wanted to get and it was not the time. I did not have any conversation with Gross when I went back to him. Before I went back to Gross, I went back to Schiller and he gave me all the poultry I wanted again, all I could buy. He said, "I will sell you poultry but I am afraid"; he said he paid them $100 fine for selling me the first week that I bought there. He did not say to whom he paid the fine. He told me of course my credit was good and he would give me all the poultry I want, but I left Schiller during that month and I was not a steady customer there, and he could not sell me any poultry after that. I asked him who he was afraid of, and he told me the trust. I said, "What's the best thing to do, Mr. Schiller?" He said, "The best thing to do is to go down to Ben Simon, the Chamber of Commerce, and ask him that you be my customer, and I will allow you to kill here as before." My partner went to Ben Simon. Schiller said, "If you had come down here before

the trust began, I would sell you poultry, you would be my customer, but now I can't do it, you must go back to Gross." I told him I was a customer there four years, "Why don't you give me poultry now?" He said, "Go back to Gross and pay your bill, then I will see whether I give you poultry."

So I didn't go back to Gross to pay his bills because he treated me so bad, and I paid him a week after that. Then I bought off Gross all this time until I sold my place. In between the months I bought of Gross, I went once or twice [fol. 658] to Schiller & Levy, and Schiller & Levy sold me poultry then.

Cross-examination.

By Mr. Jacobson:

As to this taxicab incident, it was in 1927, the time I couldn't get any poultry; it was about 6 o'clock in the morning, before the regular hours of business. I had been dealing with Schiller & Levy for about three years, from 1924 until November, 1927. Then I went to Mr. Gross for five or six months. During that period of five or six months I dealt with Schiller, too, and with Hornstein & Spatz. After the five or six months—that was in 1928—after I stopped dealing with Gross, I dealt with Joe Mines and the Heights Poultry Company; those are the only other two places I dealt. During those five or six months, Gross charged three and four cents above the market for two months, and then he began to charge seven to ten cents above the market, and I went back to Schiller & Levy. I had been away from Schiller & Levy for two months and had not traded with them during that time.

Going back to the time that I quit trading with Schiller & Levy, in November, 1927, they were charging me a fair price. I did not have any trouble with Schiller & Levy. When I got Schiller & Levy I never knew there was an association. When Gross charged me that higher price it was while the trust was on. I can't remember what month; I know it was in 1927. I began to trade with Gross in November, 1927, and he charged me three or four cents above the market about two or three months. After that he charged me seven to ten. When I dealt with Gross I

paid my bills, but that week while he did not give me poultry I left an unpaid bill and I went to Schiller & Levy. They gave me poultry, and then Mr. Schiller told me I have to go back to Gross and pay my bills. I did not do it right away, but I went to Joe Mines first, in Yorkville. [fol. 659] I do not know whether he is a retailer or wholesaler. I bought from Mines for a couple of days and also from the Heights Poultry Company, and then I was told they could not sell me; they did not say anything else. They were afraid because their brother was downtown in Manhattan in Washington Market, and they were afraid to sell any poultry. Then I paid my bill to Gross and continued to do business with him. The only reason Schiller gave me for not selling poultry to me was that I had not paid my bill to Gross. Otherwise Schiller & Levy always sold me poultry.

[fol. 660] The following testimony was given by the witness on this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I quit the poultry business about two years ago. Since then I don't know anything about the poultry business at all.

[fol. 661] GEORGE SKLOOT, called as a witness on behalf of the Government, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a live poultry slaughterhouse man. I am in a corporation with my father and brother. I was a member of the New York Live Poultry Protective Association and also the Secretary for about six months previous to September 8, 1931. Exhibits 26 and 33 appear to represent the membership of the New York Live Poultry Dealers Protective Association while I was Secretary. I am a member and Secretary of Live Poultry Slaughter-

house Association. I believe the markets named as part of Exhibit 29 are members of the Live Poultry Slaughterhouse Association except Harry Dworkin. The list on Exhibit 29 is not complete. At the time that list was compiled I think there were about 200 names. Most of the markets listed on Exhibit 26 are members of the Live Poultry Slaughterhouse Association.

Mr. Kroppy: I move to strike that out.

The Court: Denied, I don't know if it makes any difference. It may.

Mr. Kroppy: Exception.

The Witness: Most of the members of the Live Poultry Dealers Protective Association became members of the Live Poultry Slaughterhouse Association. There might have been 15 or 20 who did not do so.

The Live Poultry Slaughterhouse Association was organized on September 8th, 1931. The class of people who became members are slaughterhouse men of Greater City of New York and vicinity. About a month or two prior to September eighth, several marketmen held an informal meeting at the railroad on West Washington Market. We discussed the evils in the industry and the methods of correcting them. We also had a meeting prior to September 8, 1931, at the office of George Mintzer. There were present, George Mintzer, Gustavus Rogers, Charles H. Tuttle, myself, Mr. Gelbutch, Louis Yedvabne, Joe Laub, Louis Gerber, Abe Harrison, Al Winkel and Harry Steinberg. Louis Gerber is not a brother of Morris Gerber, and not in the same market as Morris Gerber. There was a general discussion of the evils in the industry, and at the conclu- [fol. 662] sion of the meeting, Mr. Tuttle suggested to the slaughter house men that they get together a committee and put on paper exactly what the evils in the industry were, as it appeared, in their opinion. It was suggested that the men who were there get together the next afternoon, and they acted as a committee. I acted as chairman of the committee. As such chairman, I did not prepare a program to be adopted by the Live Poultry Slaughter House Association. I prepared a statement upon the asking of Mr. Tuttle of three specific questions:

First. Enumerate for me the evils as in your mind appear to be existing in the industry;

Second. Enumerate to me how you think these evils can be rectified;

And third. Upon the rectification of these evils, what benefit would be derived by the slaughterhousemen and what benefits would be derived by the public.

I did prepare a statement which I later submitted to Mr. Tuttle or Mr. Mintzer. Exhibit 10 for identification is a correct copy of the statement that I prepared.

Mr. Rice: I offer it in evidence.

Mr. Perlman: I object to it on the ground that it is not binding on the defendant Rosenman; incompetent and immaterial.

Mr. Kroppy: I object to it on all the grounds previously urged; it does not tend to prove any conspiracy in restraint of interstate commerce.

The Witness: Nobody came to help me. It is my preparation of the statement; it was not adopted by this committee. It was gotten up by me and it went directly to Mr. Mintzer. Nobody else touched it in between. This was my statement.

The Court: The objection is sustained; it is inadmissible at this time.

The Witness: Most of the discussion lay in what the evils were. Then I went about in my own head to discuss what I would recommend as a rectification. I did not become chairman. If I was the only one left on the committee, I appointed myself chairman. I was not pointed out by Mr. Mintzer or Mr. Tuttle or one of the marketmen present as chairman. I took it on myself to prepare that statement.

[fol. 663] If you call every time I meet a man, another market man, a meeting, then I would be having meetings continuously for the past three years. I have met one man at a time, and discussed business with him, and I have met ten at a time and discussed business with them. It was part of my function; it was part of my duties; I was secretary and I was trying to find out things to help us along and every time I met anybody I spoke to them. I asked them and they told me what they thought was wrong; that is what a meeting consisted of; there was nothing specific at any time, except when I of my own volition wrote that.

At the meeting in Mr. Mintzer's office, we discussed the question of shrinkage of poultry, short weights, and credit. We did not discuss elimination of competitive bidding. Nothing was said to me about elimination of competitive bidding by any of the marketmen. I discussed it with Mr. Tuttle and Mr. Mintzer when there were no other marketmen present. The deductions and rebates discussed at the meeting in Mr. Mintzer's office specifically refer to deductions and rebates gotten from us by customers who were not supposed to get them or who claimed them for no reason at all. Nothing was said at the meeting about saving $1,955,000 by the elimination of competitive bidding. I figured that out myself, without the aid of any other marketman. I did not discuss it with any other marketmen after I had computed it.

(No cross-examination.)

Mr. Kroppy: I move to strike out the testimony of this witness, on the ground that it does not tend to prove the existence or the continuance of any conspiracy in restraint of interstate commerce on the part of any of the defendants, nor does it tend to connect any of the defendants with any conspiracy in restraint of interstate commerce.

The Court: Denied.

Mr. Kroppy: Exception.

Nor has this witness testified to any conspiracy or to anything that might be considered as overt acts in the furtherance or in pursuance of a conspiracy in restraint of interstate commerce, and I object to it on all the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 664] MAX COHEN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a marketman of live poultry in Harlem. I was a member of the Harlem & Bronx Poultry Board of Trade, but I resigned at one meeting I attended.

That was on October 17, 1931, when I was called up by Max Wolas. He said that we should form a credit association and that each one should put up dues $50.

Mr. Perlman: I object to the testimony of this witness on the ground it is incompetent and not binding on any of the defendants except the defendant Wolas, and on the ground that this is only for an alleged conspiracy; to have been entered into by these defendants; it is by way of narrative and not binding on any of the defendants.

The Court: Over-ruled; it is admissible for an entirely different purpose, proceed.

Q. What else did Mr. Wolas say when he invited you to attend the meeting?

The Court: I will say specifically it has a bearing on the question whether or not certain events which might be decided to have constituted a conspiracy whether there is a danger of a continuance of the evils which are alleged to have resulted from the conspiracy should recur in the event an injunction should not be granted.

Mr. Perlman: Exception.

The Witness: About 90% of the wholesalers from the Bronx were present. Harlem is very small; they only got maybe two or three altogether. Max Wolas called the meeting. He got up and made a speech and he said it is legal to have a Credit Association. Wolas and Charley Siegel did most of the talking. All that Wolas mentioned was that we are to have a credit system to operate by forming a corporation. Counselor William Greenfogel was there and they were figuring out with the counselor, they will have 2% to cover the expenses for running the office. That is all the talk there was. Charley Siegal was talking. That is the best proposition to be done; that is all. 2% of the business done by those people who joined the Association was to go to maintaining an office and covering expenses.

About forming a Credit Association, Max Wolas said that if a customer comes to me and he owes another marketman $400. I could give him for cash, but I wouldn't [fol. 665] give him for trust; I wouldn't trust him. A customer was not to be given credit unless he had paid his bills to a prior marketman. Whether the marketmen there

agreed to that, I don't know because they decided to have another meeting and they didn't call me for the other meeting. It was discussed by some of the marketmen at the meeting; some of them didn't agree; some of them did agree. Charley Siegal and most of them were in favor of it.

The custom of the trade in regard to paying the bills to marketmen is for the customer to pay weekly, on Monday, for his purchases during the previous week. He never pays before Monday. Some of them come around Saturday and they want to buy in another place; they give me the bill; they pay me the bill and they say "I don't like to deal with you." If a customer wanted to go away from me in the middle of the week and buy from another marketman he would have to pay my bill up first. The custom of the butcher, he don't go away in the middle of the week; he finishes the week. If he wanted to go away in the middle of the week that was arranged; that is, that's the way we run the business, he couldn't go away, excepting he paid.

Most of the 27 marketmen present paid the initiation fees of $50 to a Secretary there. Wolas had a bookkeeper, a secretary, Alex is the first name; I don't know the second. I gave a check for $50 to pay the initiation fee. I stopped payment on that check on Monday following the meeting on Saturday. They never called me any more. I did not talk to anybody before I stopped payment on the check. I gave the check on Monday, October 19. I bought poultry on the following Wednesday in West Washington Market. What happened was that Mr. Hawk, a commission man to whom I had given a check told me plain, I am holding him up on two weeks and he wouldn't sell me any poultry. On Wednesday, October 31, Sol Frankel who is a commission man did not sell me any poultry. He didn't mention why; he wouldn't talk to me. He said he didn't have for me any poultry. That was the answer of Bert Frankel. Hawk said I gave him a check a week later for $147 and when he had plenty of stuff on the stand, I was asking for poultry [fol. 666] and he said "You held me that check up too long." That was the answer. He said that I had held up a check for a prior purchase too long, and therefore he wouldn't give me any poultry. On that occasion on

Wednesday, October 31, I didn't owe Hawk or Frankel any money.

By the Court:

The Witness: I had held up a check of Hawk's about two weeks before. During that two weeks before October 31st I had not bought any poultry from him. I had bought some poultry from him and held up a check and the next time I went down there two weeks later, he wouldn't sell me any. He said the reason he wouldn't sell me was because I had held up the check. The check had been given to him already. It wasn't a bad check. He said I had held it up on him, and I had held it up on him.

By Mr. Rice:

The Witness: Frankel did not give any reason at all after that for refusing to sell me.

Harry Shomer has been in my market, the early part of July, 1931. At that time I kept three men of Local 167, and I says "Will you relieve me?" I said "Take off one of them and I may be able to transact my business." He says if I want to run wholesale, I must have three men. That was including the schochet, too. In the earliest part of May 1931 I had four, one schochet and three men. I couldn't afford it and I was talking to Harry a couple of times and I says "Try to relieve me." He said "You got to wait till the end of May." He did relieve me, he left off one man. He said "I am going to take off one man and I will let you have two men and one schochet."

I was selling in May 1931 about 9,000 pounds a week. It is a very small market. We were two partners and we employed three people from Local 167 and one rabbi, that is four.

Q. How many did you need with that amount of business?

Mr. Kaufman: I object to that.

The Court: Over-ruled.

Mr. Kaufman: Exception.

The Court: He has got some definite facts; he knows how to run his business.

Q. How many men and how many shochtim did you need [fol. 667] with 9,000 pounds of poultry per week?

Mr. Kaufman: I object to that on the ground that it is incompetent. Assuming the railroad official might say he can get along with one-half of the staff, but they have made their arrangements with the union and they carry out those arrangements with the union.

The Court: Over-ruled.

Mr. Kaufman: Exception.

The Witness: Naturally, the business fell away in the summer-time 5,000 pounds, half of it, at that time I was able to run my business with one man and one shochet. The business fallen off by the week 4,000 pounds from the 8th of June, and July I made an appeal to leave me off a man; they wouldn't listen to me. I asked him a couple of times, Harry Shomer, a delegate, that he should let me work with one man and he refused. The end of July I couldn't afford to keep two men and I laid them off all the three, and I asked also for one man and they refused to give me it. I said "I don't need so many" but without the shochet, I couldn't keep open the business, so naturally they sent me back again the two men. It was closed on Monday and Tuesday morning we were settled to have the same two men and the shochet back again. I had it closed for two days, prior to the time Harry Shomer reduced the number of men from 3 to 2. He says "If you don't get two men, you can't sell any wholesale, with one man you can only do retail. That is the rule."

At the meeting I attended on October 17th, 1931, there were Simon from Van Ness, Izzy Gordon from Bedford Avenue, Sam Manne, Joseph Mann, Kalman Gross, Benjamin Steinberg, Sam Cohen, Max Wolas, Mooney Siegal, Kuzenitz of the Morris Avenue Poultry Company, Plotkin, and Charlie Siegal of Plotkin & Siegal, and Slaybod of Slaybod & Kasten.

Cross-examination.

By Mr. Kaufman:

The Witness: In May of 1931 I had three men and a shochet. In June and July the business always falls off and I said to Mr. Shomer that I wanted to be relieved of one man. He told me that there were so many union men out of work that they wanted to keep as many men working as possible. I was looking out for myself; I wasn't trying

[fol. 668] to keep their men employed. In July I brought in Mr. Shomer again and told him business was falling off more and that I couldn't get along with the three men, and he took one of the union men off. At that time he didn't tell me that it was a pity that the union men were out of work and their families were starving.

In the summer of 1929 I had some trouble with my partner, and wanted to buy him out. We were unable to pay our bills and I wanted my partner to put some more money into the firm, and he wouldn't do it. Then I went to the union again, and saw Arthur Herbert. I told him I was trying to raise enough money to get rid of my partner, and asked him to take away another union man so that I could save some extra money and thereby get rid of my partner a little quicker. It was after the holidays in September that I went to Arthur Herbert and said "I am trying to get rid of my partner and I want you should take another man away so that I can save some money, and get rid of my partner a little quicker" That was after the business was killed. When we had holidays I had to keep two men and I did keep the two men but after the holidays it wasn't worth enough for one man; I asked him again to relieve just one man. That is why I asked him after the holidays, to relieve me of the one man, and he did it. After the holidays I was getting along with one man and one shochet. On Thursday and Friday I got in an extra man. I still got that one man and that one shochet. I have a contract with the union. That contract provides that I am to have four men and one shochet. Nevertheless, the union gave me the privilege, because I was not doing so well, to have only three men and one shochet till 1931. In July they consented further that I should only have two men and one shochet, and at the end of September, they consented that I should have only one man and one shochet. In the summer of 1931 when I was having trouble with my partner, I did not have much money in my business, and our bills were behind; we owed money in the market, and our bills in the market were past due, all during the summer and fall of 1931. At the present, no. Prior to the 21st of October 1931 I bought merchandise from Hawk,—the last time about the 5th, 6th or 7th of October. The bill for that was due to Hawk on the 12th and I gave him a check on the 21st of October.

At the time I paid him I asked him for stuff. He said he [fol. 669] did not want to sell me any merchandise because I was a slow payer. In September 1931 I made a C. O. D. purchase from the Acme Commission Co. because he would not sell poultry except for cash, and I gave him a check. Then I stopped payment on the check.

Further cross-examination.

By Mr. Perlman:

The Witness: I paid my schochet $65 a week up to last week; $55 now. He is a union schochet. I have had a contract with the Schochtim Union which provides that I shall pay the schochet $65 a week. I recently went to the office of the Schochtim Union and asked permission to pay less than $65 a week to my schochet. I told Charlie Herbert that business was bad and I could not afford to pay $65. I wanted to continue to have a union schochet and pay less. Charlie Herbert told me that he would see my schochet and try to induce him to work for $55 a week. He went to the union schochet and pleaded with him to take $55 a week, and that is why I am paying $55 a week. During the last three years no member of any union or any officer or any delegate from any union has told me from whom to buy my poultry or to whom to sell my poultry, or at what price I should sell my poultry.

Redirect examination.

By Mr. Rice:

The Witness: Before October 1931 when Hawk would not sell me, I was never refused poultry at West Washington Market. I bought there steadily. I never go outside. That is the first time I was refused. I know of other marketmen in New York who have signed contracts with the Schochtim Union or with Local 167. They do not all employ two schochtim and four men; they employ sometimes three men. Their contract is the same contract as mine. I know many instances where they do a wholesale business and yet they do not employ four members of Local 167. I have seen the contract with the Schochtim Union to do a wholesale business. The contract requires me to take one schochet and one helper. I know a man

he has got a wholesale place and he is only running with three union men, one is not a union man. He has signed a contract with Local 167 and one with the Schochtim Union. I have to keep a salesman, also a union man; some marketmen keep salesmen that are not union men.

Recross-examination.

By Mr. Perlman:

[fol. 670] The Witness: The wholesaler who has three union members in Local 167 is on 121st Street. He employs a strict union schochet. I don't know of any marketmen that have made a contract with the Schochtim Union who do not employ a union schochet. If you slaughter 50 coops a week, you only have to have one schochet, and you don't have to have a helper. When you start slaughtering more than 50 coops a week, then you have to have a helper, and sometimes two schochtim. It all depends on the number of coops above 50 coops that the market slaughters a week. The contracts made by the marketmen are all alike. When they slaughter 50 coops or less, there is only one schochet; when it goes to a hundred there will be two schochtim a week, and if it is 150, maybe three.

Further recross-examination.

By Mr. Kaufman:

The Witness: The market on 121st Street has three union men and one non-union man. It is the market of Jaffe & Wolas. The man that works there who is not a union man is Jack Loeb. He used to be my former partner. I don't like him.

Mr. Kroppy: I move to strike out all the testimony on all the grounds previously urged and also on the ground, as far as the Harlem and Bronx Credit Association is concerned, that is a separate and distinct organization which has no relation at all to and has not been connected with any conspiracy of marketmen or with any of the defendants in the case and hasn't any relevancy or materiality to this case and I move to strike it out on all the grounds previously urged.

The Court: Motion denied.

Mr. Kroppy: Exception.

[fol. 671] JOSEPH HASENFRATZ, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The following testimony of this witness given at a former trial in October, 1929, was read in evidence by stipulation subject to objection and exception as to its competency and materiality.

Direct examination:

I have been in the chicken business, selling slaughtered poultry, twenty-one years altogether. I have been located at 921 Blake Avenue about eight or nine years. During the summer and fall of 1927 I was buying stuff all over. In 1927, the 17th of July, David Hurshon called me in his place and said, "Listen, you belong to me and Jacob Mintz." I says, "Why?" He says, "We have got an association and you are going to kill with me and Jacob Mintz." I said, "No, I will not; I am going to kill all over." He said, "Nothing doing; you are going to stick to two places," and I said, "I will not." He says, "All right, we will see."

After that, I was trying once by Koslow. I got poultry for cash. I also tried at Frisman & Azwolinsky, and Mirotznik, 817 Liberty Avenue. I can't remember any other places. After that I used to buy from Mintz and Hirshon. They charged me four, five, ten cents, fifteen cents, sixteen cents above the market. They used to buy sick poultry in West Washington Market and I was paying their price. That was Mintz.

I had one conversation with Carl Firestone. I asked him for $5 and he says, "Here is $5, how long do you intend to live?" I don't remember any other conversation with him. I had a conversation with Hirshon two days before the bomb exploded. He called me in his house and he says, "Listen, Joe, I will give you the balance what I owe you to wipe it off, I will give you $25,000 if you be a good boy; I give you your own price for poultry." I don't remember that he said what he meant by being a good boy. He said if I would not be a good boy, I would be surprised; "You will get it so dirty you will be surprised."

[fol. 672] Q. Thereafter, what, if anything, happened to you?

A. A bomb exploded.

Q. Where?

A. In my house.

Mr. Kaufman: I move to strike that out. I object to it. It is highly improper and is prejudicial to the defendants.

By the Court:

Q. Were you there?

A. Yes.

Mr. Kaufman: I move to strike it out. It is prejudicial to these defendants unless some connection is shown with respect to defendants other than Hirshon, assuming it is an admission against him.

Mr. Oseas: What a defendant says to this witness?

The Court: Objection overruled.

Mr. Kaufman: *Exception.* I move for a mistrial upon the ground the testimony is highly prejudicial against the defendants, particularly because no connection with this incident has been shown with any of the defendants.

The Court: Motion denied.

Mr. Kaufman: Exception.

Mr. Sager: Exception.

By Mr. Oseas:

Q. Where was that explosion?

A. 920 Dumont Avenue.

Q. Is that your home?

A. That is my home.

By the Court:

Q. What was the date of it?

A. The 19th of August, 3 o'clock in the morning.

Q. Where was the explosion?

A. At my kitchen door.

[fol. 673] Q. What damage was done?

A. Everything, the whole house broke.

The Court: I will allow the testimony to stand there was an explosion by the door.

By Mr. Oseas:

Q. Go ahead. Was anyone injured?

A. My wife cut herself in the shoulder; the plastering came down.

Q. You were in the house at the time?

A. Yes.

Mr. Kaufman: I object to this testimony as being highly prejudicial. You only permit it to stand, the fact that there was an explosion?

The Court: Yes. Go ahead.

Mr. Kaufman: Then I ask your Honor, as far as the District Attorney is concerned, to stop this line of inquiry.

The Court: I will allow him to show what damage was done.

Mr. Kaufman: Exception.

Before that time I had been to see you. I didn't speak to the defendants about coming to see you. I did not talk to them. They would not give me any chickens. I did not talk to Hirshon for a good while. Carl Firestone told me, "I am going to give you a bullet in the heart." That was May or July, 1928. Koslow said I should not be so mean, I should not go to get the chicken dealers against them. In July, 1928, Mintz said that if I go to the Attorney General he would not give me any chickens. I would not get any chickens, that is all.

Cross-examination:

This Dave Hasenfrantz who testified here last week was my brother. He conducted a slaughterhouse market. I [fol. 674] did not buy goods from him during the time that I bought from these other people or at any time before that. These other people sued me but I did not owe them. I had a talk with Hirshon on July 17, 1927. This other conversation with him was on the 17th of August, 1928. There was an explosion in my house on the 19th of August. I live in a four-family house, on the top floor. The explosion was in my apartment. I was not insured. I had a gas range and my wife used it.

I bought from Taits & Company and Mirotznik in Brownsville on credit. I also bought from Hirshon on credit. He told me if I will be a good boy he will give

me the balance what I owed him. I didn't owe him any balance. He asked me for a thousand dollars or $1100, I can't remember that exactly, or $1200, I do not know exactly. That is in the lawyer's hands. I bought from Mintz on credit. I owed him $1000. I bought from Kadin on credit.

During the time I bought from these people I was buying from anybody I pleased. I was then a chicken dealer, buying from the marketman. My brother was a marketman, but I was not buying from him. His place of business was also in Brownsville, two blocks away from me.

My apartment is on the top floor, one flight up. There were four families in the house, two downstairs and two upstairs. You get into the house through the hallway that is used by all the families. My apartment consisted of a kitchen, dining-room and parlor and a bedroom. This happened at 3 o'clock in the morning. To get into my apartment from the hallway I had to open a door. I do not lock any door in my apartment, only the kitchen. The kitchen is where this explosion took place. From the hallway, I enter into my kitchen and then go into the rest of the apartment. The kitchen door is locked every night. I did not see anybody around there at the time.

[fol. 675] By the Court:

This explosion was outside the kitchen door—everything broke inside, the roof and everything. No gas pipes were broken. They found the wire and cotton. On the first floor was a butcher—the store was empty at the time.

By Mr. Jacobson:

At one time I conducted a slaughterhouse market. I failed in that business and it was settled. I do not remember that during the last week or two that I was in business I bought a lot of poultry in West Washington Market; I bought stuff all the time. I sold all the time, credit and cash.

Q. Don't you know that you collected the money on the cash sales and you said you gave that to some restaurant man—you testified to that?

A. I paid him, I paid him $600.

Q. Don't you remember that the restaurant man denied that he ever got a nickel?

A. I paid him, I paid him, yes.

Q. Didn't the restaurant man testify that you didn't even owe him a nickel?

A. I was not present when he testified. It was after that that I became a chicken dealer.

Mr. Kaufman: I move to strike out the testimony of this witness which indicates or tends to indicate that the explosion was the result of a bomb. It is clearly a conclusion of the witness and is not a statement of fact. Upon the further ground that it is in no wise connected with any of these defendants.

The Court: Motion denied.

Mr. Kaufman: Exception.

Mr. Jacobson: If your Honor please, I make the same motion on behalf of the defendants I represent. I move to [fol. 676] strike out the testimony of the witness as to the occurrences, as he alleges, of August 19, 1928.

The Court: Motion denied.

Mr. Jacobson: Exception.

[fol. 677] The following testimony took place at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: The trouble I had started in July of 1927 and stopped in 1930. It stopped before the criminal trial in October, 1929. It hasn't stopped yet. They are still after me. They still want to get me but they can't get me. I get my poultry wherever I want and I get whatever I want. I have been getting if wherever I want and whenever I wanted it for several years. I have been buying my poultry wherever and whenever I wanted this year and in 1930 and in 1929, the year of the criminal trial. In 1929 I had a fight with Tootsie Herbert on the 15th of January, 1929. That is the last fight we had. In 1929 he sent Frank Narra—his right name is Louis Ludkin to cut me up at Bedford Avenue. This Frankie Narra, he is a gangster. I know he is a gangster. He wanted to cut me up at Bedford Avenue with a big knife and I said if you don't get out of here I will blow your brains out, and he went away from me.

Redirect examination.

By Mr. Rice:

The Witness: Arthur Herbert stopped me from getting poultry in 1929. About six or seven months before the criminal trial Louis Mirotznik and Holman both told me, and I had to get a squad of detectives to watch the market. They said to Tootsie Herbert what do you want to do with Joe Hasenfratz? He said "Nothing." They said what do you want to bother with him for, so he said, "I don't want to bother him now; he is only a rat." The last time I had any trouble in 1929 was in May and June, just before the criminal trial. Louis Mirotznik told me "If you go on the stand and testify, you will get no poultry." I went on the stand and I did not want to testify. He told me that at the time the case was going on. And Kleinman told me the same thing. He said "If you go on the stand, you get no stuff."

Mr. Kroppy: I move to strike out all the testimony on all the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

Recross-examination.

By Mr. Kaufman:

[fol. 678] The Witness: When I go into the market some give me credit and some don't. I don't buy from the West Washington Market. I am a retailer. I buy from Mintz. I deal only in slaughtered poultry. I used to be a marketman in 1921. Since that time I have not been a marketman. I do not have any union men working for me. I had one union man, when I had the market. Since that time I haven't had any union men at all. I buy on credit from Mintz and Louis Mirotznik. When I buy from Hirshon or Mannie Gordon I have to pay cash. There may be two more to whom I have to pay cash. I don't say exactly, some I get credit; some I have to pay cash.

[fols. 679 & 680] Mark Gelb, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony given by the witness at a former trial in October, 1929, was read in evidence, pursuant to stipulation, subject to objection and exception as to competency and materiality.

Direct examination.

By Mr. Oseas:

I operate a live poultry market. I buy my live poultry at West Washington Market and the railroads, all over. I have been in that business the last six or seven years. My place of business at the present time is 25 Withers Street. I have been doing business at that address three years and the name of that market is Gelb & Einhorn. Sometimes they call it the Withers Street Market. I am acquainted with the defendants David Kaufman, Sidney Rosenstein and Samuel Sahn (identifying the defendants).

I had a little conversation with Samuel Sahn in October, 1927, but not with anybody else. I had two or three butchers at that time and the union at that time had an awful lot of men going around looking for work, so they wanted to place men wherever they could find any room for them, they wanted to place men. I have two or three butchers at the time and Mr. Sahn offered to give me $50 a week if I would give him the two or three butchers because I was not able to take care of them at the time; he knew I was not able to take care of them. He said he would give me $50 a week if I would give him my two or three accounts I had at that time. I told him that just at that time I could not give him an answer right away and I told him that I would give him an answer some time during the week. Then he walked out of my place. He told me I can give him my answer at any time. I did not decline his offer, because I told him I would have to speak it over with my partner and I would give him my answer some time during the week. Nobody else was present during that conversation. Poultry came into our place of business every day thereafter.

[fol. 681] A few weeks following the last conversation I had with Mr. Sahn, he happened to pass my place of business and he stopped off. I told him that proposition he gave me, that I would accept. I was supposed to give

him a couple of accounts that I had, butchers that I had, and he was supposed to give me in exchange $50 a week. I had two accounts at that time. Sahn told me that if I will give him the two butchers, he did not say exactly two, whatever I had, that he would give me in exchange $50 a week for them. Before I had this business, in reality those butchers belonged to him; they were his accounts before I had them. I had those accounts and if I stop selling them they would go back to his place, where they dealt before, and likely he would get them. His exact words are: "You cannot take care of any butchers in here; if you want to do wholesale, the union is bothering you; now there is a lot of men out of work to-day," and if I take on more butchers they would not go after me because I have already had men in my place and two or three more they won't bother me; "so if you will give me the two accounts which you are only able to make about forty or fifty dollars a week from them, I will give you $50 a week for them." That is all he said. It passed a few weeks, and one week I would get it and the next week I would get it and possibly a few weeks I would not get it, and then a couple of weeks I would not get it, and I met him and I asked him if I take back the butchers, and he came into my store. Those butchers went back to Sahn.

I remember having a conversation at the Chamber of Commerce thereafter. I just happened to be up there. I saw Samuel Sahn, Brown from Irving Poultry, Seewald and Fertig, Morris Gerber from Williamsburg, and I believe David Hirshon. A few more; just at present it slips my mind. I didn't see any Benjamin Simon there. I was not well acquainted with them at that time to know them. [fol. 682] I don't remember seeing any of the Herberts there. I think Joe Usin and Ben Zimmerman was there. There was quite a number of market people. I happened to be up there—just happened to be a meeting at that time. It was a Monday. The Chamber of Commerce had their meetings on Monday and I went to see Fertig, who happens to be a cousin of mine; from Fertig & Seewald. All the market people were there at that time and I seen Sammy Sahn and I asked him why didn't he pay me last week's $50, so he told me business was very slack at that

time, that was the summertime; it is generally a slack season in the poultry business, and as soon as business picks up he will pay everything back that he owes me. That was all that he said.

When Sammy Sahn did not pay me the $50 at that time, when I heard the argument, I had the two butchers back again. I went over and solicited their trade again. Before I went to the Chamber of Commerce, I had started selling to butchers a month or two before. I have said before, there was no meeting at the time, it was only the day of the meeting. I told you the conversation I had with Sammy Sahn about the argument, he didn't pay me the $50 for the previous week, and I asked him why didn't he pay it to me. My side of the argument was, the reason I took back those two butchers was because he didn't live up to his agreement, and his side of the argument was that business was bad, that he could not pay it at the time, that he would make everything up to me when the fall season comes around. I didn't have a thing to do with Sam Gold and never said a word to him. Brown just mixed in, quieting his voice down and told me why can't I see it Sam Sahn's way, as far as he knows of him he wouldn't try to do me out of everything or the money, that everything would be made up to me; and naturally I was arguing my point that he has got my account and he has been making on them the money, why can't he turn [fol. 683] it over to me. Then we came to the agreement that I turn over the accounts again to him and wait a little while and see how things turn out.

After that conversation things went along quietly. I got my money after that from Sahn, $50 a week, time off and time on again. When he didn't pay me the money, if I waited a week or so and he didn't pay me no money, I went ahead and I killed for those two butchers if I was able to get them back again, and whoever dropped in I killed for. A strange butcher once in a while dropped in that paid me cash. I didn't know them and I killed for them.

I know Charles Herbert. During one time he came around and told me he had a complaint that my shochet came in before union hours. I explained to him. He asked the shochet whether it was true or not and the

shochet denied it and that was the end if it. He was never in my place of business except on that one occasion. There was a man with him but I am not very well acquainted with any of the union delegates or shochtim delegates. I don't know the name of that other man.

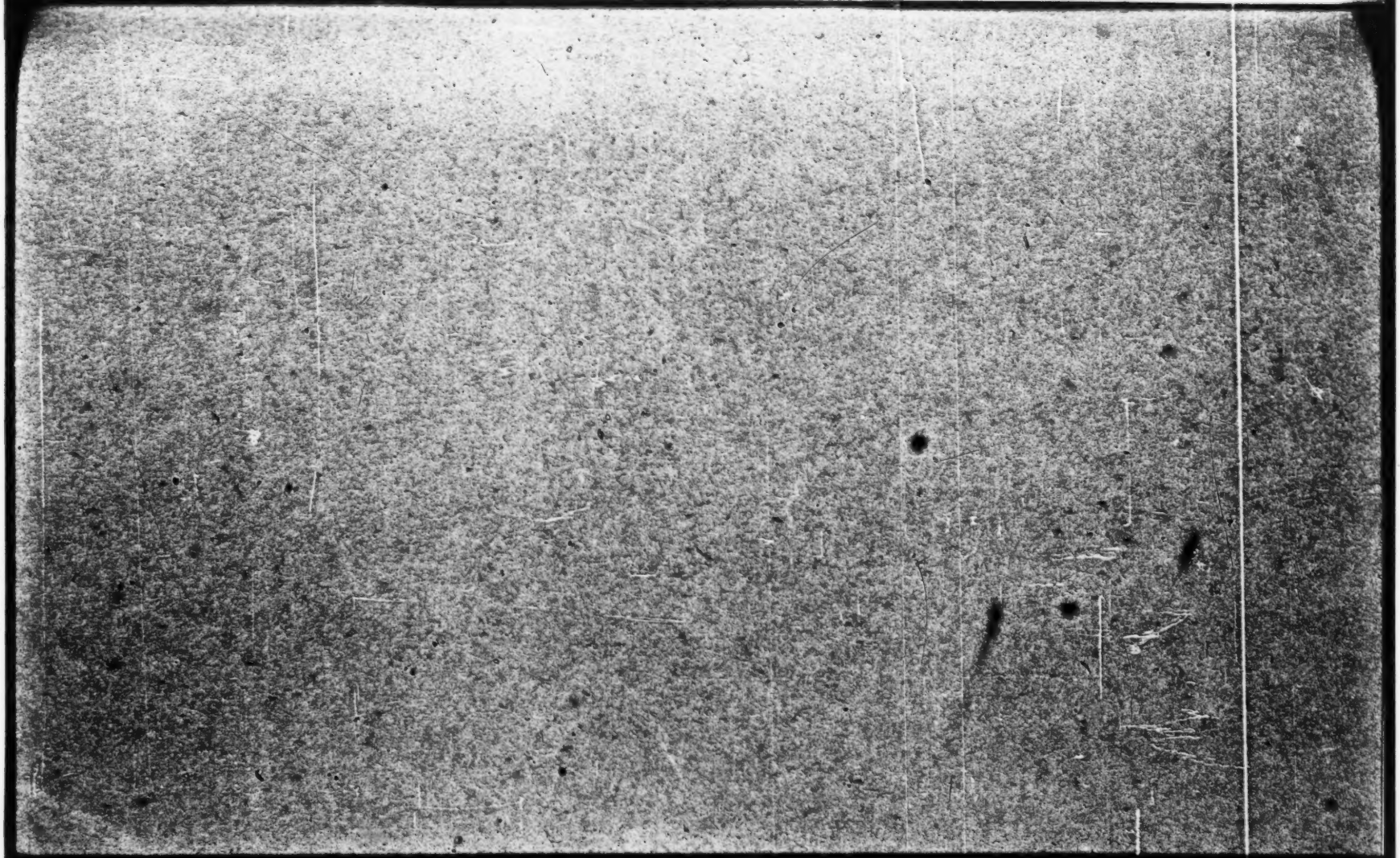
About the time I dropped in the Chamber of Commerce and saw these people, I have told everything that I remember. In the first place I cannot stay there too long. I had no business up there and I was not a member of the Chamber of Commerce. I am not a member to-day. I had no connection with them. I just went up to see Mr. Fertig there. The only Benny Simon I am acquainted with is one that had a market on Edgewater Road.

That was the argument I had with Sam Sahn when he offered to give me the money as soon as business would turn better for him. That was weeks and weeks of argument. I told him I am sick and tired of the whole thing. "Either you are going to be honest with me or I won't be honest with you. I don't want the money any more." The result was everybody around from the Irving Poultry [fol. 684] mixed in and said, "What's the good of all this argument and discussion? I know Sam Sahn before you do, he never did me any harm, he never took anything away from me; he won't take anything away from you." The result was we let it go a few weeks more.

Cross-examination.

By Mr. Sager:

The Greater New York Live Poultry Chamber of Commerce has its office on 14th Street, in the Borough of Manhattan, New York City. That is right close to the West Washington Market. It consists of several rooms on the third floor. One is a large assembly room almost as big as this courtroom and it would seat quite a few people. Then they have a couple or three smaller offices. I have been there more than on this one occasion, on and off, and never have been a member of the Chamber. It is a place where men engaged in the poultry business and all branches of it assemble, whether they are members or not, go there to spend a few idle hours or to meet and play a game of cards and meet socially. The doors are not



(37,444)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 6

LOCAL 167 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA, CARL FIRESTONE, CHARLES GERSHOWITZ, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

VOL. II

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closed unless they have some special meeting, and it is a place where, if you are looking for a man in my business, you are quite likely to find him. . .

[fol. 685] The following testimony given by JACOB SCHATZ at a former trial in October, 1929, was read in evidence by stipulation as in case of previous witnesses.

Direct examination:

The Witness: I am acquainted with the defendant David Hirshon. On or about July 17, 1927, I had a conversation with him in the P. & M. Restaurant. At that conversation were Hirshon and Mintz and Morris Gordon. They said to me that it was impossible to make a living, talking amongst themselves, and I says, "Well, what is the best thing to do?" And they said, "Well, the following day, we are going to raise another cent on poultry." I says, "What is going to be the idea of that?" And they says, "Well, we cannot make a living; otherwise we will have to find a remedy, if we are to make a living we will have to charge a cent more for the guerrillas and a cent more for our own benefit." I think it was Mintz said that; I just don't remember who said it. That was about all I can recollect, at that time. I was buying poultry at that time from all of them. The next morning I spoke to Morris Gordon. He said, "I have to charge you a cent more for poultry." I said, "What is that for?" He said, "Well, we cannot make a living otherwise. I am sorry I cannot help you and you have got to help yourself." That was the conversation and I killed that poultry and went back to my store. When I got there, some fellows came around there and said to me, "You are not going to sell any butchers today." I said I would. Who these fellows were I do not know. We then had an argument and the result was that I sold the people I wanted to sell, and they told me, "If you sell them you won't be able to get any more stuff." I said; "Well, that is all up to me." I tried to get poultry from Hellman who said to me, "I will sell you, [fol. 686] but the shochets won't kill for you." The price

at that time went up one cent and then the following week went up another. Later it went up one penny more, that is all. Hellman was the only man who refused to sell me poultry.

Hirshon or Gordon or Mintz never said anything to me about selling to strange butchers.

Cross-examination.

By Mr. Sager:

The Witness: I had a conversation with Mr. Hirshon and Gordon and Mintz at the B. & M. Restaurant on a Saturday evening, in July, 1928. Mintz's business is wholesale poultry in Brooklyn. At the time of this conversation I was in the retail business in the Brownsville District. I was president of the Brownsville & East New York Retail Chicken Dealers Association at the time of this conversation. I did not meet these gentlemen there by appointment but by chance. Mr. Hirshon or Morris Gordon or Jacob Mintz did not tell me where I should buy my poultry or how I should pay at any time. And they have never told me where I would have to sell my poultry. What I claim occurred was that one of the three said the price would be advanced a cent. And that was on the 17th of July, 1928. I met them after that, but there was no conversation. I talked the next morning with Gordon and he simply told me that in order to make a profit he would have to charge a cent more. I have had plenty of quarrels with Hirshon in this business. I joined with an organization to boycott him on one occasion and we called a strike against him. That was around Passover in the year of 1928. That strike was called because Hirshon charged one cent a pound more than any other slaughterhouse. That is the reason I joined with the others to boycott him when trade was at [fol. 687] its peak and when his business would otherwise have been at its best.

Q. You said something, Mr. Schatz, about your not selling butchers slaughtered poultry—someone told you not to do that?

A. Yes, sir.

Q. Isn't it a fact that butchers whose credit is bad with the marketmen or slaughterers cannot — any merchandise

from the marketmen or slaughterhouses because they do not pay their bills, but that they go to the butchers, the same people in whose line you are, and try to get merchandise?

Mr. Oseas: I object to any extraneous transactions with other people, not at all testified to or directed.

The Court: Sustained.

Mr. Kaufman: Exception.

The Witness: I owe Hellman about $75. I began to owe Hellman money ever since I dealt with him. I gave Hellman plenty of checks that came back.

Mr. Kroppy: I make the same motion to strike out this witness's testimony.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 688] The following testimony was given by the witness at this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am a butcher and poultry dealer in Brooklyn. I have not had any difficulty buying poultry, and I have not heard of anyone having difficulty since 1928 in my borough. I buy wherever and whenever I want and what I want.

[fol. 689] The following testimony, given by BENJAMIN ROTHSCHILD at a former trial in October, 1929, was read in evidence by stipulation as in the case of other witnesses.

Direct examination:

"I am a shochet. I have been a shochet about ten years. As to the Official Orthodox Poultry Slaughterers of America, Inc., I was not only a member, but I was one of the organizers; I signed the application for a charter and I was also a member of the executive committee. That was in the winter of 1926-1927. I was a member at the earlier union of the Federation of Labor. The delegates were

Charley Herbert and Joe Weiner. As far as I know they are still the delegates.

On December 22, 1927, I was sent by an official of the shochet union to work for Kaplan on 108th Street and First Avenue. I was sent with a card of the union signed by the secretary and also the president. As soon as they put us aside, and when I lost my job and I lost my right as an executive member, I did not work for the entire summer. After that I worked for four weeks in the market of Shonzeit in the Bronx—over the holidays. After that I remained again without a job until I was able to approach Mr. Ben Simon and he forced the president and secretary to give me a job (identifying Mr. Benjamin Simon, the supervisor). That is how I was sent to this job. First Mr. Shapiro told me to go and a few minutes later Mr. Rosenman gave me a card (a person rises). That is the Shapiro I mean. Because Mr. Benny Simon told me I should go and tell them he sent me and they have to give me a job and if they would not give it to me, that I should come back and tell him that they would not give me a job. This is the card they gave me at that time. I was handed this card in the office from the union. Mr. Rosenman, the secretary, handed it to me.

(Card marked Government's Exhibit 52 in evidence.)

[fol. 690] When I told Mr. Shapiro that Mr. Benny Simon told me I should get a job, he said, "You will get a job, but you will not be able to slaughter for butchers." So I asked him why, and he would not say any more, but he went into another room. Then Rosenman came out and he handed me the card and said, "But remember, for no butchers." I asked him the reason why; he said, "Do not ask any questions, but as long as you slaughter for even one butcher you will be taken away from your job."

I went up all summer, and not only I, but my wife, who was in a family way, went up and told them she had no milk for the children, and cried for a job for me. I did not work from July until the holidays. That is, the holi-
[fol. 691] days of Rosh Hashanah, Yom Kipper and Succoth in 1927. I then worked four full weeks. Then again I went to Roseman and asked him for a job, telling him that I had to make a living, and he said to me, "You have already got enough money, now somebody else must make

a living." Then I did not work for eight weeks until December when I went to the job at Kaplan's. I worked for Kaplan about seven or eight months, and then he sold out to another boss and I worked for him about two months. During that time I did not slaughter for any butchers. Butchers came and I had enough trouble for the boss about that; with Kaplan mostly. (A person rises) No, that is not Kaplan.

Mr. Shalleck: May the record show that the Kaplan referred to is not one of the defendants indicted?

The market is now closed. It was called the Globe Live Poultry Market. Kaplan and Beck were the owners. They were both from Spring Valley. I told him that unless he brought me an order from the union that I was not permitted to slaughter for the butchers, and I would not slaughter, because I was afraid of my job. Kaplan asked me to slaughter for butchers. I told him what I have just said. This happened during the year that I worked for him. I can't remember exactly. Also happened with the second boss of the market. I started working for him from the 22nd day of December until the end of 1928. And it was during that period that these things happened. Brown and Stampler bought the market from Kaplan and the other man, the Globe Market. That was during July or August, 1928. The other one promised me even more, and for him I slaughtered on the quiet for one butcher in the Bronx.

Cross-examination.

By Mr. Shalleck:

I know that the union has two kinds of shochets, one for retailers and one for wholesalers. Under the union [fol. 692] rules the retailer pays a smaller price than the wholesaler pays for the shochet. According to the regulations the retailer is 45 and the wholesaler 65. I was first sent down by the union to Kaplan to do retail shochet work for 25. Roseman gave me a card that I was to go down there and work for $25 and three cents for every chicken. Herbert did not go down to Kaplan and fight with Kaplan for me to get me an increase of wages. Kaplan asked me to slaughter chickens for other butchers at

first, but I told him unless he brought me an order from the union I could not do it, because I did not want to lose my job for 25 also. I knew no other reason except that the order of the president and secretary was not to do it. Where they slaughter for butchers, that is wholesale business.

Under the union rules a wholesale shochet or a shochet who slaughters for wholesale men gets wholesale wages. And the union scale is $65 a week for wholesalers. And I was sent down to Kaplan to retail. For wholesalers there is a definite sum of fifty coops for a shochet. Under fifty coops is also considered wholesale, but they have to get the wages; but the retail means not slaughtering for butchers. When I was receiving $25 a week and three cents for chickens slaughtered I made about $28 a week. And Kaplan wanted me to slaughter for other butchers. How could I complain to the union when they gave me an order to go and work for $25? The order was for $25 only, but the boss was so fine he wanted to see me to get three cents for every chicken. Kaplan voluntarily gave me three cents extra per chicken with the hope that if I would be at hand and he needed to slaughter for the butchers I would do so. He said that he saw that I cannot make a living for $25, so he would let me take three cents for every chicken, because I am a family man and I cannot make a living.

The largest number of chickens I slaughtered a week for Kaplan sometimes was about 150 and sometimes 70, [fol. 693] but it averaged about a hundred. I am not a member of the union now. I got no book and pay no dues. I made about $25 a week for Kaplan. That means that I would have to slaughter on the average of a hundred a week. Considering that if I slaughtered a hundred chickens a week, I received $28, making 28 cents a chicken. I don't want to revise my figures as to how many chickens I slaughtered a week. That remains so. The average weight of a chicken was about four or five pounds. For the period of time I was employed by Kaplan I was getting at the rate of seven cents a pound for slaughtering those chickens at the rate of a hundred a week, six or seven cents a pound for slaughtering. Yes, that is so. That is not the only market; there are many such small markets and they just pay in that way. And Kaplan & Beck voluntarily gave me three cents extra a chicken. At that

rate it would have averaged about two and a half coops a week, about a hundred chickens.

Prior to the time I joined this union I belonged to Local 343. I was one of those who assisted in organizing it downtown. They pushed me out of the union, they looked for things against me, but they couldn't find anything, but they pushed me out and then I started to organize another union. They didn't charge me with having a colored man and an Irishman as delegates to the shochet union. That is absolutely not true; it is a lie. When they settled with the lockout they sent back the shochtim. Then Jaffe and Greenstein sent me out of their market because they said they must take in union shochtim. In the same day I went to the delegate, Charley Herbert, and there also was there Schulman and I told them that my boss had sent me out of the market. Then Harry Schulman brought out a card and Charley Herbert signed it, saying that I must go back to the Tremont Market where I had worked. Then I went with the card, and Jaffe told me that I could not work unless I brought a card signed by [fol. 694] the president and secretary of the union. On Charley Herbert's card I could not go to work. I heard about Walsh, that he had been a delegate of the union, of Local 343. Of my union there was no Irishman a delegate. After I had been thrown out of Local 343 I was told they had a delegate by the name of Zalmonowitz and a delegate by the name of Walsh, but I had nothing to do with them at that time. At the time I belonged those two were not delegates. I never heard of Jano. I don't know any colored man by that name. The other delegate with Herbert that I heard about was Zalmonowitz. As far as I can recall at that time the unions were not yet united, and they had a separate union downtown. As a result of various disputes in course of time there was only one union of shochtim. We made a joint board and Kalman Shapiro was elected as president. In my time there were not yet any delegates. The downtowners didn't have any delegate. Herbert and Wiener were not delegates. They became delegates when they made this present union, the Poultry Slaughterers Association.

After the consolidation, when they settled on the 22nd of June, they put us aside and they did the whole business themselves. I did not try after that to organize my

own union. I went up to the union every week and I wrote to the executive and I asked why they had set me aside, that they had taken me away from my job. They did not let me go to the executive until the seventh or eighth week and then Mr. Shapiro told me that over the holidays they would give me a job and after the holidays they would see whether or not I would be taken into the union. They didn't let me talk further, they sent me right out. After the amalgamation they both got together and formed one union, but did not retain the old offices. Me they threw out of the union altogether. They wouldn't give me a book and they wouldn't let me into the union. I know that after the consolidation all the shochets met in Clinton [fol. 695] Hall and elected officials and delegates. Our president, Birdle, told us we should all go to Clinton Hall and he would fix it so that to our executive there shall be elected two-thirds, we were too small an organization, and when we went to Clinton Hall I understood that to our executive committee there would be elected two-thirds. At the election I thought it would be as he said, but two days later I found out they had set me aside entirely. That was at the mass meeting at Clinton Hall where the election of officers and delegates took place.

By Mr. Hallheimer:

When I was having this difficulty in procuring employment I went up to see Mr. Benjamin Simon, the supervisor of the Greater New York Live Poultry Chamber of Commerce. He treated me with consideration when I called. Very much so. I went to Mr. Birdle and Mr. Birdle told me I shall go to the Chamber of Commerce and there I would see Mr. Bennie Simon, and he would help me to get a job. I know only what our president, Mr. Birdle, told me. The first time when I went to Mr. Simon he promised me he would try with Charley Herbert that I should get a job. When two weeks passed by and we didn't have money to pay rent, and my wife became very impatient, and she said she would go to Bennie Simon. Then I waited a little while longer and I went up again to Mr. Simon and told him I didn't have money to pay for milk for the babies. Then he did me a kindness and loaned me $10 from his own pocket. He said he would try his best to get me a job. Then I came to him a week later and told

him I was to Mr. Gross, the marketman. Mr. Gross told me, why don't I go to the District Attorney and show him this. Then I told him before I went to the District Attorney I would go once again to Mr. Bennie Simon, then if I didn't get a job I would go to the District Attorney. Then Mr. Bennie Simon in my presence called up Mr. Shapiro [fols. 696 & 697] and told him this man is our first man to work, he must get work. Then Shapiro told me until I get a job, I would have a helper's place. Then a week later I got the job at Kaplan's. The job at Kaplan's was that of a helper and not a shochet. The shochet's wage was $45 a week then according to the agreement. When I was there nobody else was there killing chickens. I was the only man who killed chickens for Kaplan over the period of time that I was employed there.

Redirect examination.

By Mr. Oseas:

I was not an officer of Local 323. The president of the old union, Local 323, was Shapiro. That is the same man that is president of this union. The delegates of this union are not shochtim.

[fol. 698] The following testimony was given by the witness at this trial:

Direct examination.

By Mr. Rice:

The Witness: I talked to Joseph Rosenman after the criminal trial. I went to the Schochtim Union the next week after I was on the witness stand for a job. He said to me, "Why did you testify the way you did at the trial against me?" He said to me if I am not afraid he will punch me in the face. I answered him "No," I am not afraid of him, and I said, "Don't forget that I was four years in the army in the world war." He said I should remember that he has lost $60,000 in Wall Street.

Mr. Kaufman: I move to strike that out.
The Court: Motion denied.
Mr. Kaufman: Exception.

The Witness: He did not say anything else. We don't talk about jobs at that time. If they want to they will give you a job in the office. I went every day to see whether there was a job. I went to the union only to get a job. That is the only reason I went there. I did not ask for a job. Just by going to the union alone, that is the same as asking.

Mr. Kroppy: I move to strike out the testimony of this witness on all the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 699] Morris Chast, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I have been working in a fruit store for about a year. Before that I was in the poultry line, a marketman on the East side. I was a partner with Louis Kazansky. I was a defendant in the criminal case. I was convicted but sentence was suspended. I know Charles Herbert. I talked to him a little, about October 22nd, 1931. I asked him where I could get laborers and a place, if I wanted to go in the poultry business again. He says "Yes, I am not going to keep anybody from going into the business." He answered me "Whatever my brother will do, I am in favor." He told me to see his brother Arthur Herbert and I did. He said to me he wished me luck when I went to start it off and he will send me a set of men, that is all. He did not say how many men; he said a set of men. Charles Herbert did not say anything about the number of men. I told him I wanted one working man and one shochet. He said a set of men; the men we have in business. A box has four corners, a coop of poultry, so I have got to have four men to carry out the business. One man Arthur Herbert didn't refuse but he bargained with me and I agreed to take two men. We came to an understanding I was to take in two men and I agreed with that. I

don't have any quarrel with Arthur Herbert now. I made that agreement two weeks ago.

Mr. Kroppy: I move to strike out the testimony of this witness on the previous grounds.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 700] HARRY GOLDMAN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I used to be in the retail poultry business about six months ago in Passaic, New Jersey, not now. When I was in business I used to buy my poultry in Newark, from the North Jersey Poultry Company. I used to buy off of both commissioners down there, but mostly from the North Jersey Poultry Company.

Q. What man in the North Jersey Poultry Company did you deal with?

A. Max Solomon.

Q. Max Solomon?

A. Yes.

Q. Did he always sell you poultry?

A. He was selling me poultry.

Q. He always sold you poultry?

A. He was selling me poultry until about six weeks before I went out of business.

Q. Until about six weeks before you went out of business?

A. Yes, sir.

Q. And then did he refuse to sell you poultry?

A. Yes, sir.

Q. Can you establish the date of that?

A. I don't remember.

Mr. Perlman: I object to all this testimony; it has not been shown that Max Solomon is a co-conspirator or a defendant in this case.

The Court: Over-ruled.

Mr. Perlman: Exception.

Q. What did Max Solomon say to you——

Mr. Perlman: I object to that.

The Court: Over-ruled.

Mr. Perlman: Exception.

The Witness: He told me he can't sell me any more poultry. What else he said I don't remember. I didn't say anything to him.

Poultry came in on the railroad and I went down to the railroad terminal of the Erie Railroad to buy from com- [fol. 701] mission men. There would be eight or ten commission men around there ordinarily, and I had a chance to deal with any of those that I wanted to. I dealt with the North Jersey Poultry Company. I used to deal with the others too, but I stopped dealing with them a long time. There is Standard Live Poultry Company; the Interstate Live Poultry Company. I can't remember the rest. When I used to come in with the truck, they used to load me up the truck. The poultry would still be in the car, and they used to unload it from the cars. They took it off the cars and they put it in the coops, and from the coops they put it on the trucks for the customers. If I bought two coops, they would take off enough poultry to fill two coops and I would buy them.

Q. Just about when was this that Max Solomon of North Jersey Poultry Company refused to sell you poultry?

A. I was in business six or seven weeks, I don't remember exactly.

Q. What season of the year was it?

A. It was just before Easter.

Q. Just before Easter in 1931?

A. Yes.

Q. Now, prior to the time that Max Solomon refused to sell you poultry, had you become part owner of a poultry market?

A. Well, I was a partner in poultry market before that.

Q. Before that time, yes that is what I asked you.

A. Yes.

Q. Of a poultry market?

A. Yes, at 204 Monroe, and we had another one at 250 Hammond Avenue in Passaic.

By Mr. Rice:

Q. Had you become a member of the Mutual Poultry Society?

Mr. Perlman: I object to that, if your honor please.
The Court: Over-ruled.
Mr. Perlman: Exception.

Q. Let me ask you this way: Have you ever heard of the Superior Live Poultry Market, Inc.?
A. Yes, sir.
Q. Tell us what that was.
A. Before I was with another gentleman partners——

Mr. Perlman: I understand this is all subject to our objection as not part of the alleged conspiracy.
The Court: Yes; over-ruled.
Mr. Perlman: Exception.

[fol. 702] The Witness: I was before in partners with Berowitz and we were calling ourselves Superior Live Poultry Company, but it was not incorporated.

Q. Who was the party from Passaic?
A. You understand in Passaic they have four rabbis there and there was some kind of a scrap between the rabbis because the two rabbis were getting money from the city and two were not getting any money from the city.

Mr. Perlman: I move to strike all of that out as not binding on the defendants.
The Court: Denied.
Mr. Perlman: Exception.

The Witness: So they brought a paper over from Passaic and they came to me they should buy from me, and they should make a corporation. Some parties in the city wanted the other two rabbis to get money from the city too, so that they should be able to live too. In Passaic, in order to kill kosher, it was required to defray the expense of the killing, that ten cents per chicken be paid. Seven cents went to the schochet, and three cents went to the city. Under the system as it then existed, that three cents went to the two rabbis and the other two rabbis did not get any of it. A corporation was formed so that the

other two rabbis could come in and get part of that three cents. It was called Superior Live Poultry Company, Inc. It was incorporated. Louis Berowitz, James Lipschitz, Morris Lieb and I were the stockholders. This corporation sold retail to customers and we sold wholesale to a couple of butchers too. The two rabbis did not get three cents for each chicken that was killed in our market because we didn't have money to give them.

Q. Now, how much did you charge for the poultry that you sold?

Mr. Perlman: I object to it as incompetent and immaterial.

The Court: Over-ruled.

Mr. Perlman: Exception.

The Witness: I don't remember what we charged; it was different prices. I think sometimes 5 cents and sometimes 6 cents above the market quotations.

We didn't look to the other markets to see what they were charging. We were charging prices just to cover [fol. 703] expenses. In fixing the prices we would change the price from day to day as the market quotation went up or down. We sold sometimes at 5 cents above the market quotation, sometimes a couple of cents more; sometimes as low as 2 and 3 cents.

Q. Now, we are going back to the occasion when you went to the railroad terminal to buy poultry from Max Solomon, of the North Jersey Poultry Company. Now Max Solomon is a commission man, is he not?

A. Yes.

Q. Now, you told us that Max Solomon told you that he could not sell you any poultry?

A. No.

Q. Did he give some explanation? Did he tell you why he couldn't sell you now? Think carefully.

A. You see, if it would be right away, maybe——

Mr. Kroppy: That calls for a Yes or No answer, if your Honor please.

The Court: Proceed.

A. (contd.). If, would be right away I would remember but now I don't remember. The thing is long already and there is plenty of things I don't remember.

Q. You made out an affidavit, did you not, before your attorney?

A. Yes, I made an affidavit but this was six or seven months ago and I can't remember what was then.

Q. You made that application on April 31, 1931, is that right?

A. Yes.

Q. And you remembered that time?

A. That time I remembered, sure.

Q. Now, think carefully and see if you can't recall what else Max Solomon said. And did he say anything as to the reason why he couldn't sell you poultry any more?

A. He came into my market and told me, he didn't sell only me, there was more people in there, and said "Can't sell you any poultry"; he says "You try to get some poultry for Easter, because I haven't got any poultry for you."

The Court:

Q. Did you have this talk with Max Solomon?

A. He came over to my market.

Q. He came down to your place?

A. Yes, sir.

Q. And after he got down to your place you had a talk with him?

A. He went in the place and he told us he couldn't give us any poultry.

Q. He came down to your place and said he can't give you any poultry any more?

A. Yes.

Q. Did he just say that he can't give you any more poultry, did he give you any reason or any explanation?

A. He didn't give me no names.

Q. I don't care whether he gave you any names or not; [fol. 704] not that.

A. He said "I can't give you any poultry" and I think he did say, "I wouldn't take any chances in giving you any poultry."

The Witness: He didn't say he wouldn't sell us because we hadn't paid him before; he didn't claim that. I know the company owed him money; they owed him $1800, whatever it is, and they would pay him something on account if he would give them poultry; they would pay him the rest,

but he didn't give them poultry so the company didn't pay him. I think there is still coming to him about $700. He said "I can't give you any poultry." And the people started asking him "What is the matter, Max?" And he said "We don't want to take no chances." At the time that Max Solomon said this Morris Lieb and Cantor and a couple of more fellows were there but I don't remember who. I went on the side; they spoke to him yet.

After that I went to the commission house, Standard Live Poultry Market. They didn't give us any poultry.

By Mr. Rice:

Q. Was it Nathan Fauer?
A. Nathan Fauer.

Mr. Perlman: I object to that as incompetent.
The Court: Over-ruled.
Mr. Perlman: Exception. I want to state that Nathan Fauer is not a co-conspirator in this case and not a defendant.
Mr. Kroppy: And also on the ground that it is absolutely hearsay and not made in the presence of any of the other defendants.
The Court: Over-ruled.
Mr. Kroppy: Exception.

The Witness: He gave us the poultry from his market, not from the car. I think once or twice he gave us and then I called him over by the telephone and asked him if he could give us any poultry and he said "Yes, come to the market." He said "Put your truck in a garage and I will come over and bring poultry." He will pull in with his truck and he is going to transfer the poultry from his truck to our truck.

Q. Do you know why he wanted to deliver the poultry [fol. 705] inside the garage; if you know why, why didn't he deliver the poultry in the open?
A. He didn't want to give us in the open.

Mr. Perlman: I move to strike it out.
The Court: Denied.
Mr. Perlman: Exception.

The Witness: There was with me at the time that Nathan Fauer talked to me, Morris Lieb and Abraham Davin.

Then after he came out and says "I am sorry, boys; I can't give any poultry." He did not deliver it in the garage. I had put my truck in the garage to get poultry. He says, "I don't want to take any chances." I was going to the Interstate Live Poultry Market where I talked to Horowitz. I don't think it was this day. It was after Max Solomon, but I don't remember. I used to buy from Horowitz before yet. When I went over to Superior Live Poultry Company, I didn't deal with him, but I went over to him once and asked him for poultry. I don't remember what he said he hasn't got it. I didn't do any business with the Standard; at the railroad terminal he was giving us from his market. After the North Jersey Poultry Company refused to sell me any more, I went first in the West and then I went to Standard Live Poultry Market. When I tried to buy from the Interstate Live Poultry Company, I don't remember if it was after or before I went to the Standard. Horowitz wouldn't sell me any poultry. I never bargained with them on prices because I was paying the market price. They always took poultry from the car and we never bargained with the prices and whatever the market is we pay them. Horowitz said he hasn't got poultry for me and maybe he said something else. It is seven months away and it left my mind. I thought this thing was forgotten already. He said "If you get any chickens, I want you to let me know." I think he said if the other commission men will give me, he will give me too.

Q. Do you remember what Mr. Horowitz said on the occasion that he refused you poultry?

A. What Mr. Horowitz said?

Mr. Perlman: I object to the form of the question, "On the occasion that he refused to sell poultry."

The Court: Over-ruled.

[fol. 706] Mr. Perlman: I except.

A. He said he has not got no poultry. Let me have that paper again.

Mr. Perlman: Just a minute, I object to that.

Mr. Kroppy: He has read it.

The Court: Objection over-ruled; proceed. I won't just let him read from that paper.

Q. Do you remember what Mr. Horowitz said?

A. Well, he said he can't give us no poultry.

Q. Did he say anything else?

A. Horowitz said he couldn't give us no poultry because we sell cheaper to the people than the other market people.

Q. Were you selling cheaper than the other market people?

Mr. Perlman: I object to that.

The Court: Over-ruled.

Mr. Perlman: Exception.

The Witness: We were selling a couple cents above the market price, just to cover expenses. He said "You can't buy any poultry in this yard."

After Mr. Horowitz refused to sell me I think I was buying poultry of Newman. He just gave us a couple of coops and when I asked for a couple more he refused to sell us. He didn't threaten me. I don't remember his saying anything about getting out of the market.

After I had been refused at the railroad terminals, first I went to Indianapolis, Indiana by train. I sent the poultry by express. Naturally it cost more than I could buy it in the market at Newark.

Q. How much more?

Mr. Perlman: I object to the question.

The Court: Over-ruled.

Mr. Perlman: Exception.

The Witness: I bought poultry from Indianapolis only once, because it was costing too much money. Then I bought in Philadelphia at the market price in Philadelphia and we had to hire trucks and go down there at night and it is about a hundred miles away, and poultry riding such a long distance—naturally it cost more—with all expenses it cost a couple of cents a pound more from Philadelphia. [fol. 707] We bought two times or three. After Philadelphia we were buying from the Standard Live Poultry Market. They sold us. They told us to go to the market at South 12th Street where they had a retail market. That market is not called the Standard Live Poultry; it is called a different name. We got some poultry down there once or twice, but the third time they would not give us any more.

Q. What did they say when they would not give you any more?

Mr. Perlman: I object to that.
The Court: Over-ruled.
Mr. Perlman: Exception.

A. What did they say? They said they are afraid to take a chance.
Q. What else did they say?
A. Nathan Fauer said "We don't know with who you are starting up with. You better go home."

The Witness: The Standard owed us $82. We paid cash for merchandise then and he overcharged us $82, so Mr. Lieb asked Fauer for the money and he said "I haven't got it." So Lieb said to him, "Give me your check." He said "I wouldn't give a check." He did not want to give his check with his name on, he would get cash. I don't know why. He did not want to give his check, I know that. He was afraid.

Q. Did he say who he was afraid of?
A. I don't remember that.
Q. Did he say why he was afraid?
A. I don't remember that.
Q. Did he say because the other markets would find out—

Mr. Perlman: Just a moment, I object to that, Mr. Rice.
Mr. Rice: Let me finish my question.
Mr. Perlman: I know you want to tell him what to answer. The question, so far as it has gone, has gone far enough to indicate that you are leading the witness, and I object to the question.
The Court: Over-ruled.
Mr. Perlman: I except.

Q. Did he say he was afraid to give you a check because if the other markets found out that he had been selling you that his life would not be worth anything?
[fol. 708] A. I think he did say that. He said go home.

The Witness: I know Charles Scharer. He is inspecting poultry cars at the railroad terminals to see that the poultry should not be overfed. The commission houses in Newark pay him $4 a car for inspection. I don't know what else he does.

Q. Where did you talk to him?

Mr. Perlman: I object to any conversation had with an inspector, if your Honor please.

The Court: Over-ruled.

Mr. Perlman: Exception.

The Witness: I spoke to him in the yard. I used to speak to him always, when I saw him. I saw him at the Standard Live Poultry Market, but I did not talk to him there and he did not talk to me. At the time I saw Charlie Scharer at the Standard Live Poultry Market Morris Lieb and Abraham David were there. I don't know if Charles Scharer talked to them. Charles Scharer just went down to the market. I didn't see him doing anything there.

I talked to a man named Joe at the Standard Live Poultry Market. He is a foreman down at the market. He said "You better go home." Before, when I came he said, "You wait here and Nathan is going to bring some fowls," then after he went away and didn't give us any poultry, we came over there in the morning and Joe told us to wait and they would bring some poultry. Whenever we would come for poultry Joe used to give us a hand. At that time we went away without poultry.

Q. Was anything said to you by Joe at the time you went away without poultry?

Mr. Perlman: Yes or no is all.

A. I don't remember.

Q. Did Joe say anything about some people being there, some people having come there?

Mr. Kroppy: I object to that as incompetent.

The Court: Over-ruled.

Mr. Kroppy: Exception.

A. Yes, he said "You better go home, because some people are riding around here," whatever it is.

[fol. 709] Q. He said some people are riding around here?

A. Yes.

Q. Did he say who had been riding around here?

Mr. Perlman: I object.

The Court: Over-ruled.

Mr. Perlman: Exception.

A. He seen Charlie Scharer was there and somebody else, I don't remember, so "I could not give you any poultry," he said.

Q. He said Charlie Scharer was riding around there?

A. He said "somebody was riding around there." He did not have to say who.

Q. He mentioned Charlie Scharer's name?

Mr. Kroppy: I object.

The Court: Over-ruled.

Mr. Kroppy: Exception.

The Witness: He did not have to mention him. I seen Charlie Scharer around the market.

We did receive some poultry from the Standard Live Poultry Market. I dealt with Nathan Fauer there. He didn't give us no bills from his market. He made out bills on plain paper. He had not given us bills on a plain piece of paper before that time. I don't remember if he said why he was giving us a bill on a plain slip of paper then.

Mr. Perlman: I move to strike out all the testimony of this witness on the ground that it is hearsay and not competent and not binding on the defendants in this case.

The Court: Denied.

Mr. Perlman: I respectfully except.

Mr. Kroppy: I move to strike out the testimony of the witness on all the grounds previously urged; it has no tendency to prove conspiracy in restraint of interstate commerce alleged in the complaint, nor does it tend to prove any acts of interference with interstate commerce in pursuance of any conspiracy to which any of the defendants in this case are alleged to be parties.

I also move to strike out the testimony on the ground that it tends to show a separate and distinct conspiracy, if any, in the State of New Jersey, unconnected in any way with any of the defendants in this case, and under the law, [fol. 710] the prosecution is not entitled to prove a general conspiracy by proof of local conspiracies in other parts of the country.

The Court: Denied.

Mr. Kroppy: I say the Government has attempted to prove conspiracy in that manner, and I object to it on that ground.

I also move to strike out the testimony, if your Honor please, on the ground that it is hearsay, and if I may be heard in that connection your Honor mentioned something about a decision of the Court of Appeals. I object to all this conversation made in the absence of the defendants in this case or any of them on the ground that it is hearsay and I say it is objectionable because it does not tend to prove any conspiracy which has its object restraint of interstate commerce.

The Court of Appeals in the criminal case said proof of intrastate interferences was competent in order to prove the object of a conspiracy and the method of carrying it out and it furthermore said in that decision the principal object in that case was a local object in restraint of intrastate commerce and I say it is absolutely immaterial and incompetent to prove by this intrastate interference that the object of the conspiracy here was in restraint of interstate commerce or the proper method of proving that the object was a restraint of interstate commerce. Suppose the evidence does show intrastate interference, with a local object in view, and the method of carrying it out, and suppose that was established, what possible difference can it make on the question that is here at issue, whether the conspiracy was in restraint of interstate commerce?

The Court: Motion denied.

Mr. Kroppy: Exception.

The Court: I won't stop now to say why it is relevant. You- objections do not in the slightest degree affect the competency of this testimony under the rules of evidence. What the effect it will have remains to be seen.

Mr. Rice: If your Honor please, may I ask one more question?

The Court: Yes.

The Witness: In the spring of 1931 I used to go to New York but I don't remember whether I went this time when I was refused poultry in Newark. I think I got a couple of coops. I could not get all I asked for. When I asked [fol. 711] for more, they told me they didn't have any more, I forgot the name of the man. I don't remember if I went to some other commission house to buy poultry. There are plenty of commission houses here, and I can't remember all the names—In West Washington Market, and I paid cash for it. At the time I bought poultry some-

one did come up and talked to me. I don't remember his name. I used to see him in West Washington Market. He asked me if I gave any merchandise to Nochemson.

Q. To whom? Say it again.
A. If I gave any merchandise to Nochemson.

Mr. Perlman: I object to it on the ground that it is hearsay.
The Court: Over-ruled.
Mr. Perlman: Exception.

Q. What else did he say?
A. So he said I don't give him any merchandise.

I used to be in the poultry business in Newark but he was not one of my customers. I was getting poultry off him and when I needed poultry, he used to help out sometimes with a coop of poultry. I don't see in this courtroom the man that came up and talked to me. I do not go down in the market and buy poultry. Now I am working myself personally and I don't bother with the market; the market is my brother-in-laws. This man told me "Do you give poultry to Nochemsons?" I told him I don't give him any poultry. I took some poultry; he needed some poultry, so he took a couple of coops of poultry, so I gave it back; I don't know the fellow's name and I gave it back. He says "You gave poultry to Nochemson?" I said "No, I buy poultry from Nochemson myself. I didn't give him any poultry."

Q. What else did this man say to you?
A. Well——

Mr. Perlman: Objection.
The Court: Over-ruled.
Mr. Perlman: Exception.

The Witness: He said if you would give poultry to Nochemson & Sons you wouldn't get stuff. I saw him many times; he didn't hurt me. I will look around the courtroom. I don't see the man. I have never seen this man Charles Herbert or Arthur Herbert before. I don't know [fol. 712] the man who talked with me in West Washington Market. I seen him walking around but I don't know his name. He used to be in West Washington Market. I don't go often there. Maybe twice a year; maybe five

times a year. I am telling you; I used to see him down in the market but I didn't know whether his name was Max Keslin or anybody else. I did not have any trouble so I did not bother. I never heard the name Max Keslin but I used to hear the name Max. Whether this was called I am not sure; maybe yes. I didn't have any business with him. I know Mr. Lieb. He was down there in West Washington Market with me when I talked to that man. I think I did know the name of the man at that time. I think I heard them call Max, the work people was calling him Max. I never spoke to him; I don't bother with the man. I don't know his second name

Cross-examination.

By Mr. Perlman:

The Witness: I have never before seen the defendant Rosenman. I never had any dealings with the Shochtim Union in New York or with any members or officers or delegates of that Union. I never had anything to do with any schochat in New York. I never had any dealings with Local 167, the Chauffeur's Union, in New York, and never talked to or met any member or delegate of that Union, or any union. No Union ever told me where to buy my poultry or to whom to sell my poultry, or what price I should charge for my poultry. No Union ever told me in New Jersey from whom to buy and to whom to sell my poultry, or at what price to sell my poultry. There is no union in Jersey.

Personally, I don't owe any money today for poultry. I think there is $700 or $800 owed to Solomon by the Superior Live Poultry Company, Inc., but not me personally. It owed the money six weeks before we closed the business and still owes him. The money is owed for poultry bought about six weeks before we closed our business. I was President of the corporation; Barowitz, vice president. There was Lipshitz, and Mr. Lieb was the treasurer. Before we owed him that $700 Solomon was giving us poultry. Before it isn't $700 we owed him; $1800. When he stopped giving us poultry we paid him $1100. We owed him for a week's purchase of poultry $1800. We only paid [fol. 713] him $1100. We only paid him $1100 at that time but we had the money coming in. We had some more

cash -ut that is all we gave him. When the week was up we were to pay him the $1800 and we only paid him $1100. After that we did not offer to pay him the $700 we still owed him. The corporation went into bankruptcy. It didn't owe much money, about $2,000. We went into bankruptcy the same day we closed. After we paid Solomon only the $1,100 I didn't bother with him or go to him any more. I suppose Mr. Solomon did come to the corporation —to ask for the balance of the $700. I don't remember what I told him or whether I told him we had the money and wouldn't pay. After we left Solomon and didn't pay him the $700 we went to Fauer and he would only sell us for cash. I think I gave him a check. The check was made good. I bought from Fauer for cash as many times as I was buying off of him. I don't remember how many times. That was after we owed $700 to Solomon. I didn't ask Fauer for credit. I did not tell Fauer that we owed Solomon $700. I did not have to tell Fauer that we were dealing with Solomon's market before. He knew we were dealing with Max Solomon and then he sold us for cash. After he sold us for cash, I did not try to buy for credit, and I didn't pay Solomon part of the $700. I don't remember if it was Newman or Horowitz that I bought from after that. We didn't pay Soloman the $700. I went to a few commission men in Newark. I was paying some of them cash and some of them not. I got credit from Fauer after I was in the corporation. I don't know if all the market people knew that our corporation owed Solomon the $700 and that it wasn't paying its bills.

Cross-examination.

By Mr. Kroppy:

The Witness: I had no dealings with any marketmen here in New York. They never came around to see me at any time. I never bothered with New York marketmen.

Mr. Kroppy: I move to strike all the testimony of this witness out on all the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 714] MORRIS LIEB, called as a witness on behalf of the Government, first being duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I was a stockholder and Treasurer of the Superior Live Poultry Market in Passaic, New Jersey. There is about eight or ten other markets in Passaic. The Superior Live Poultry Market was a charity corporation formed in February, 1931. The profit would go after we paid Harry Goldman and Harowitz a certain amount of money that we agreed to, to charitable places.

We charged about 4 cents a pound. If the wholesale price was 28¢ a pound, we sold it for 32¢. Other markets in Passaic at that time charged 48¢ or 35¢, they have all kinds of prices. I guess they figured about 10¢ or 12¢ on a pound and we were charging only 4¢ or 5¢. For profit we would operate but we didn't make money and if we did make money, it would go to these institutions.

I accompanied Harry Goldman to Max Solomon's in Newark for poultry the first day. After we took the place over on February 4th, 1931, we had an agreement with Max Solomon. A couple of hours before when we arranged with him he said you should come up to the market and I will give you chickens; and when we got there he said I want you personally to pay for the chickens. I said "All right; I will sign the bills that I pay personally for." Then he said "You should come over at 12 o'clock;" the cars weren't open yet. We got there about 12 o'clock; he says he wants to have my own check, no signatures at all and when it was 12 o'clock the car wasn't open yet, and he said the car would be open around three o'clock. I came back the same day about 3 o'clock and he said he wanted cash. So I brought him the cash and I paid for it. He said it is a new organization and he don't know why he should give credit, whether he should or not and he wants cash. We used to get chickens from him after that twice a week. He always sold us, the week before the Jewish holidays, about the end of March 1931. On that occasion I came down to his own market and he says he wants cash and [fol. 715] we owe him about $1200. We were ready to make

out the check for him and he said in the office "I am telling you now I gave you chickens all I could, but now, I can't give you any more chickens." Mr. Cantor, Harry Goldman, Barowitz, Meyer Baker and Louis Lipshitz were there too. We were standing around him. I says "We don't owe you nothing, and what we owe you we will pay for it." He says my life is worth more than a few chickens; my life is worth more than all the chickens in the world.

Mr. Kroppy: I move to strike out his testimony on the ground that it is not binding on any one of the defendants in this case.

The Court: Denied.

Mr. Kroppy: Exception.

The Witness: We tried to buy poultry from other commission houses, the Interstate and the Standard in Newark. They are on the same platform. I talked with Horowitz. I begged him to give me chickens and he said "No, you can't get chickens; you are bringing the prices down there." He said the other markets in Passaic did not want him to sell to me, so we wouldn't knock the prices. Those markets in Passaic were run by Louis Goldman, Orskeroff, Morris Solomon, his own brother, and even the landlord Sam Solomon, wouldn't sell us a chicken.

Horowitz also told me: "You are not going to get any chickens if you sell them as cheaply as you do." If you sell chickens, let me know; let me know whenever you get chickens." That is all he said, we are not going to get anything and we didn't get anything.

Then we went to Newman, a commission man on the same platform at the railroad terminal in Newark. There is only one track where all the chickens come in there. He was trying to give us all he could. We got 4 or 5 coops, and then when we asked for more, he said I cannot spare you anything else. We went back to Newman's commission house. When we went over there he said he had all the orders that he could fill; they were all made out for his old customers and he could not give any to new customers. Then we went down to Schnoll & Feuer—I don't [fol. 716] know whether that is the exact name, it is something like that, it is called the Standard; it was in Newark. They have got a store there. Feuer sold us all the poultry we asked for, twice. The third time we called him up on

the phone and asked if he has got any chickens and he said yes "come over with the truck and we will give you chickens." When we got there with the truck, he said "Pull over to the garage," and we pulled in across the street into the garage, because Max Solomon and Sam Solomon were following us around in the machine, and saw us the second time we were there for chickens. We were in the market waiting for Nathan Feuer. So Joe, the main manager in that market, when he saw Max Solomon go by and when he saw Sam Solomon, the second time we bought, says "Listen, boys, I am afraid we will get in trouble ourselves." The next time we will have to be more careful. We went there a couple of days later—it was the gentile holidays and the Jewish holidays and we needed a lot of chickens and we were very anxious to get them and he said "The next time you come, pull your truck in the garage." So we pulled off the baskets, and when he gets in from the railroad, we turned around, so we can go back; we weighed them in the baskets and were ready to go out, and while we were waiting in the market, two men got in there—one man I know. I say him by the railroad tracks. I believe it was Charles Scharer. The other man I never saw him before, but they called him David. Charles Scharer went in the back room where they killed the chickens and changed around his clothing. As soon as they went out, this Joe come up to us and he says, "Boys, you are out of luck. You will not be able to get any chickens today. You see those two fellows? You will never get a chicken."

Later on Feuer and Schnoll came along with a big load of chickens, and I said "Here we are waiting all morning for you. Now we will get the chickens." When Fauer saw that we were so excited, he said, "Boys, you are not going to get a feather today." "They are watching us, and I don't want to lose my life for that." Joe, the man that works in the place told Fauer we were not going to get any. Then I gave Scholl an argument and I said you owe us $82. Why not give us the chickens and we will pay the difference?" He said, "I can't. You are not to get [fol. 717] any." So I said, "All right, give us what you owe us." He says he cannot do it. I said, "Give me cash," he said "No." Then I said, "Give me a check." He said no, that check somebody will find I have transactions with

you, then I will be in trouble. He owes us the money yet.

Then we got some money and gave it to Mr. Goldman, and he went to Indianapolis to get some chickens, by railroad, and after we got the chickens from the railroad, and before we got them into the market, someone tried to poison them all. The police were watching for him too. They were not poisoned, but they died anyway, because they were too long on the train; didn't have water; it was cold weather and on account of the long train ride, they died anyhow. We paid 28 cents over there and it cost us to ship them over $300. To get them in the market it cost 32¢ and it cost us about 38¢ a pound, and we could not charge any more and we lost $5000 in three months—charity money.

I accompanied Harry Goldman to West Washington Market in New York. That was the time they refused to give us chickens that I went down in March 1931. We went to a few commission houses and we bought poultry in one place. Exactly the name I could not tell, because I was only once there since I am in this country. I did not talk to anyone besides the commission men. I saw a man coming to Goldman. Maybe if I saw him in different clothes as I saw him at that time, I might recognize him. I cannot tell you exactly the name. I did not hear anybody call his name. Only Harry Goldman was talking to him.

Q. You heard Harry Goldman call him a name?

A. Yes.

Q. What did you hear him call him?

Mr. Perlman: I object to that.

The Court: Over-ruled.

Mr. Perlman: Exception.

The Witness: If I am not mistaken it was Joe or Max, [fol. 718] one of the two. The man was about my size, maybe a little fuller or something, he had a big face and heavy built all over. He had a big stomach. He was maybe an inch or so shorter than I. I am about five foot four or five foot five. I believe he was Jewish, if I am not mistaken. I cannot describe any other features about him. He was dressed like an expressman. I did not see him do anything in the market. He was just standing there. I would not recognize the man if I saw him again. If I saw him in the same clothes that I saw him in the last time, I might. I was busy buying chickens.

Cross-examination.

By Mr. Eisler:

The Witness: I only came to New York once to buy poultry. I did get poultry; paid for it; and took it back. All the other marketmen refusing to sell me poultry were men either in Passaic or Newark. Before I became connected with the Superior Live Poultry Company I was a builder, real estate man. I had no experience in the poultry business prior to January of this year. I went into this philanthropic proposition as treasurer, and gave my services with money together without any salary. We did not go to anybody, we simply gave the benefit to the people at a low rate, and we made no difference in nationality either. We antagonized the other marketmen. I don't know if it was because we were selling much cheaper than they were. I didn't have any business with them at all. We only sold chickens. We were selling poultry at probably 4 to 5 cents above the market price and our competitors were selling at 12 cents above the market price. We knew all the men in the same line of business that we were in. Our concern was not making any money. That wasn't the reason why we went into bankruptcy. Our company went into bankruptcy when Max Solomon stopped giving us chickens. Our company owed Solomon money and up to the present time it has not been paid. We offered to pay him but he said all or nothing. We offered to pay him little by little. We had to go to Indianapolis for chickens; we could not get any from him, and that money that we would have paid him we had to spend to go to Indianapolis for chickens. We owed $1200 and we went in there with $1200 in cash, and he refused to give us any further chickens. If he would give us chickens, we would pay this bill. He came [fol. 719] to our place and we offered to pay the money every cent, provided he would give us more chickens. That was about two days after he refused to give us chickens and we were still trying to convince him to give us chickens so that we could have it for the holiday trade. We gave him $100 on account; still he would not give us any chickens, so that we figured, instead of giving Solomon $700 or $800, we would take that money and go to Indianapolis and get chickens there. I am trying to say that we agreed with Solomon about certain things and we wanted

to keep our agreement and we kept paying Solomon all the time. Solomon and other people in Newark, they told us that the retailers in the business were objecting to our getting poultry because we are selling far below the prices that they were charging. We went into bankruptcy voluntarily, because Solomon wanted to throw us into bankruptcy and close us up. $700 or $800 to Solomon was all the liabilities of the concern. I heard Mr. Perlman ask Goldman about the liabilities of our concern. I might have heard what he said, but I can't remember. I know what we owed. I didn't hear Goldman say that the concern owed about $2,000. I did not figure it out exactly what it was, but it is less than $2,000 that we owe. It is about $1100 or $1200. Besides Solomon we owed to employes. We had Harry Goldman and his wife, Berowitz, his partner, and Goldman's wife and Berowitz son, the whole family. The rent was paid up. The landlord owes us money yet.

Further cross-examination.

By Mr. Perlman:

The Witness: We started the charitable market February 4, 1931. I put in the market, between $300 and $400. I did not get my money back. The Superior Live Poultry Market, Inc., was a business corporation under the laws of New Jersey. It issued 20 shares of stock at $100 a share, which brought in $2,000. About $3,000 more was invested in the business making a total of $5,000. Of the entire $5,000 I put in $300 or $400, and got one share of stock. I filed a claim against the company in bankruptcy for $247. That was the difference above the $100 I paid for the one share of stock. I claim I had loaned the company the money. I was a creditor of the company. The other people who had given more than the amount they paid for [fol. 720] their stock also filed claims for moneys that they claimed they had advanced the company. So that the company owed the stockholders $3,000, and Solomon $700 or $800, and wages to the whole family. We owed altogether $5,000. Every dollar we invested there, what we put in cash, we lost every nickel. I believe it was $5,000, the total loss. When we opened the market we started with $5,000, which included the $2,000 for the issued stock and the moneys that were borrowed. We put out signs that we were

going to sell to the public at cost, and that we were doing a charitable business. We also had circulars, and it was in the paper. We were going to sell at a small profit. We bought chickens for 18¢ and we sold for 24¢. We notified the public that it was a charitable business. They all knew; it was in all the papers that we only wanted to make expenses and pay salaries, and the profits would go to charity. The total liabilities of Superior Live Poultry Market at the time it went into bankruptcy was between $1100 and $1200. We lost in the business $5,000. The other moneys we lost before in business because we haven's made any profits. The stockholders did not claim any money back. It was given as a charitable help to the institutions. We filed a voluntary petition in bankruptcy because Solomon was ready to throw us in bankruptcy. We offered to pay him before he wanted to throw us in bankruptcy. We offered to pay him the $700 in part payments. On that day we owed him money, we had it, but we had to go to Indianapolis for chickens so we ran short. We might have had $700 or $800 in cash when we offered to make installment payments to him. We didn't offer him all cash. Solomon would not take part payments. He wanted either all cash or nothing. He got nothing. The $1800 we owed a week before. We paid that in full. A week later, we bought some more poultry from him for $1200. We paid him $400 on account and he promised to give us chickens or if he did not send the chickens we refused him the balance. Goldman was wrong in saying we owed him for the $1800, when he said Solomon refused to sell him poultry. After we owed him the $1800, Solomon continued to sell us for another week, and after the second week, when we owed him $1200, he said he wouldn't sell us any more. Solomon came to see us when we owed him the $1200, at our place of business. He came to collect the check for the last week's [fol. 721] bill when the payment was due, that Monday morning, in the usual way. That is what he came there for. Up to that morning when he came to collect the $1200 bill, he hadn't refused to sell us poultry; we gave him some money on account. When he came there that morning he told us that he was not going to give us any more chickens, before he asked for the money. I was there on that morning when he came to collect the $1200 due that morning. We ordered the girl to make the check as soon as we

got in for $1200. She wrote out a check to the order of Solomon for $1200 and gave it to me. It wasn't signed; I tore it up because he told me he would not give us any more chickens. Unless he agreed to sell us more chickens on credit I did not want to give him the check. We had agreed with Solomon to give us chickens all the time because he got the money from Goldman, which the money was a part loss for him and Goldman took the money and paid Solomon gave this promise that he would never stop giving us enough chickens. If Solomon didn't agree to give us enough chickens, we would never go into that business. He broke the agreement and I called the check back and the same day when he told us he might send us some chickens, we gave him $400 on account. That left a balance of between $700 and $800 still owing to him. In the afternoon of that day I changed my mind when Solomon who refused to sell us chickens sent word he needs money, and I sent him $400 by check. After deducting the check for the $400. I don't remember how much balance I have in my bank, the Passaic National Bank. I can't remember if we had the $1200 in the bank that day. We did not have an account in any other bank that day. At the time that Solomon got this check for $400. I believe we had a net worth of at least as much as when we started that business. I mean in stock and in the bank. I will give you figures; we gave $2,000 to Louis Barowitz and Harry Goldman right away, we had to pay rent and bought chickens and ordered equipment that was necessary for the business. There is $3,000 going right away which we don't have any income from this money. $2000 of the first $3000 went to Harry Goldman and his partner Louis Barowitz for one-half interest in the corporation, in exchange for the good [fol. 722] will of their business and their leases which had two years to run. The membership of the city had the other half. The whole business was bought for $5,000. After that $2,000, we put in $500 to buying new chickens. The $2,000 paid to Goldman and Barowitz was used by them to pay their old bills to Max Solomon and didn't go into the business of the new company. The $1,000 out of the first $3,000 went into the bank for chickens. The other $2,000 we got from the whole membership and the congregation, we lost it the time when we went to Indianapolis

for chickens. I didn't lose it out of my pocket, but we lost it in the business. As to the last $2,000 that we got from our members and our synagogue, we called a meeting every once in a while and deposited some money in the bank for poultry. When Solomon asked for $1200 we had not yet received the other $2,000 from the congregation and the members. It was afterwards we got the $2,000 to keep supporting the business. At that time there was invested only $3,000 of which $2,000 had gone to Goldman and his partner for just the four walls of the places, and $1,000 had been paid to buy poultry. Up to that time we hadn't made a profit, up to that time we were even.

Q. And you had not made that back, had you?
A. No.

The Witness: We hadn't made any part of that $2,000 back, that we had paid to Goldman and Barowitz. Of the $1,000 that was left up to that time we had paid Solomon $1200, and we had the stock too.

Redirect examination.

By Mr. Rice:

The Witness: At the time I made out the $1200 check, we were supposed to have the money in the bank. I can't remember exactly if we had the $1200 in the bank at that time. I have all the time money of my own; money I laid out. One girl wanted to give him the money as I gave him each week, on Monday morning. In the meantime he ran into a conversation with Mr. Cantor and the rest of the people I mentioned before, instead of getting the check, some one came over to me and said "Do you hear what Solomon says? He is afraid for his life; he won't give you any more chickens."

I put the check in my pocket; I was mad about it. I didn't want to talk to him any more. If you ain't going [fol. 723] to give us any chickens, we are not going to give you any money. You agreed with me in my promise that you are going to give us chickens all the time. What are we going to do? We will have to keep the money and go and buy chickens. So we had to go to Indianapolis. The chickens came to Passaic; we paid out $1300 or $1400, we had the money for that.

In the meantime, I didn't want to go and have anything to do with Solomon. The girl called up and said "Give him $400," she says "We had in a couple of coops of chickens; we need the cash, send—we need the $800, too." We always had money. If we did not have it in the bank we had it with myself. I had $800 all the time. If there wasn't enough at the bank, I was going to deposit it in the bank. When I give a check I want that check to be good. I wouldn't issue no checks if they are not good. I had all the time cash in my pockets. I had even $2,000 cash in my pocket all the time.

Recross-examination.

By Mr. Perlman:

The Witness: I have now $4 or $5 maybe in my pocket. I haven't $2,000 or $3,000 now, but if you will allow me, I will bring it to you. I am not going to carry it around to be held up.

Cross-examination.

By Mr. Kroppy:

The Witness: All the troubles I had were either in Passaic or in Newark, New Jersey, and they were with New Jersey people. That is all the trouble we had.

Mr. Kroppy: I move to strike all the testimony out on the grounds previously stated.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 724] Isidore Spieler, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I ain't got any business now. In 1929 I used to do retail and a little bit of wholesale poultry business in Brownsville. I used to see David Kaufman and Harry Shomer. I could not say exactly the date I saw

them in West Washington Market. I think in the springtime of 1929, but I am not sure. I don't talk to them. They talked to me. They say I should take in a man of Local 167. I said I could not afford it because we are three partners in the place and we don't do a lot of business and we can't afford to keep a man. We did not have any members of Local 167 at that time. They did not say anything further. They told me in a good way to take a man, because they had plenty of people in the office who have been out of work and I should take a man; and I was a member before I went in the business, so the union have to give men work. On that day that I talked to Harry Shomer and David Kaufman I went to West Washington Market to purchase poultry. I bought all around. I got the poultry and took it home in my truck. The loaders loaded it for me. The loaders never refused to load poultry for me and never said anything to me at the time I loaded the poultry, because I was a member of the local and they did not bother me on account of this. I was a member of Local 167 before I went in the business. I made a statement in the Old Post Office Building a few days ago. I did not say that the loaders refused to load for me. They say I should take in a man and if I don't take in a man, maybe I thought they are going to stop me to load. Neither Harry Shomer nor David Kaufman nor the loaders said that they would refuse to load if I did not take another man. They told me in a good way to take a man because I didn't have any; I claimed my business was very small and I could not afford to keep a man, because we are three partners—Nobody refused me to load. No one said anything about refusing to load for me.

[fol. 725] ABRAHAM AARON, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

[fol. 726] The following testimony, given at a former trial in October, 1929, was read in evidence by stipulation as in case of previous witnesses:

Direct examination:

The Witness: I am a butcher in Borough Park, for about four years. I bought my poultry during the summer of

1927 and the summer of 1928 from the Windsor Market. Max Glantz is one of the owners of it. I paid the highest price. I don't remember, but I think it was 10 or 12 cents a pound above the market. I got poultry like all others got. Some times they allowed me to select it and sometimes they did not. Sometimes I find in every coop good ones and bad ones.

I tried several times to buy poultry elsewhere but I could not get them. I was to Frankfater Brothers and also from Abraham Wolfe. Jacob Frankfater was in the market but Wolfe and Hyman Frankfater were not in the market. For Cooper I didn't buy. Another butcher bought poultry for him, and I took him over there with the machine.

I had conversation with Sam Gold in the early part of August, 1928. He said to me in a joke, why do I spoil their business. He laughed and he smiled. He said I shall not do this business any more. I asked him why should I not do it, you are permitted to take chickens, why shouldn't I do it? I didn't take any money. He asked me for a favor, so I took the chickens over for him. Mr. Gold came with two men and said I should stop this monkey business. I asked him why, and he said because it spoils the business. I said, "What kind of business does it spoil, they have slaughtered a few chickens for him, does it spoil the business?" After that, word for word, I said to him, "What did you come here for, to fight?" I said to him, "What [fol. 727] will you do to me?" Naturally, I was angry. I said, "What will you do, hit me, kill me, or beat me up? Here is my neck," and I stretched out my neck to him, in a joke. He also said it in a joke, and he said, "We will cut you but that no blood will flow." That is all; then they went away.

Cross-examination.

By Mr. Jacobson:

The Witness: I was a regular customer in Glantz's market. I know that Cooper, a butcher, was refused merchandise by Sam Gold because he could not pay his bills and I went in to buy for him. I borrowed $500 and Max Glantz endorsed the note for me. Grossman bought poultry for Cooper on his bill and he asked me to take it over to Cooper. Grossman was another butcher. Grossman bought it and

he asked me to take it over to Cooper with the bill, how much it cost. I didn't tell Gold what I was doing. Then Gold came in and he asked me how about stopping this monkey business. I belonged to the Retail Butchers' Association out in Borough Park and so did Cooper and Grossman. Grossman was president. We had a meeting of this association. As a member of the association, he asked us to do him a favor, he was not able to get good merchandise; he was only able to get seconds; he asked us a favor.

I do not owe $110 on the account of the $500 which Glantz endorsed for me. I owe him for merchandise that I took from him, but not all the money at one time, $5 a week or $3 a week. For instance, I took 500 pounds of poultry and he told me, "I will make it with a cent cheaper." Then he would add it on the bill and when I would want to take it off the bill, he would let it stand, and so a year or a year and a half passed, I could not get any merchandise anywhere else, and so the hundred and ten dollars accumulated.

[fol. 728] Mr. Kroppy: I make the same motion.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 729] The following testimony given by this witness at this trial:

Direct examination.

By Mr. Rice:

The Witness: I am a retail butcher in Borough Park. Sometime in November 1931 a lot of butchers held a meeting in Bensonhurst near Borough Park. No marketmen were there. I buy my poultry steady by Sunset Market. I have been buying there about a year, maybe more, during the year I buy it sometimes in another place. I was charged for poultry on September 1931, all over the same price. I do not read the market quotations. I heard from a lot of butchers it was about 20 cents. I paid about that time, I should say, 17 cents, or I should say 22 cents, all kinds of prices.

On September 19th, 1931 the highest price was 32 cents. That was the market quotation. I paid for poultry on September 19th 34 cents. I bought it from The Sunset

Market. Louis Aronin is the boss. Nobody else. I buy until last week all the time from that market. I did not go to any other market to buy after September 19th. I dealt with the Majestic Market last week before Thanksgiving. I don't know the names of the proprietors of this market. I just know the name Majestic. About the first part of October 1931 I went to the Majestic Market to buy poultry.

Mr. Perlman: I object to that.
The Court: Over-ruled.
Mr. Perlman: Exception.

The Witness: At that time I did not get poultry, the proprietor said "I have no merchandise for you." At that time he didn't say anything else.
[fol. 730] I went to buy poultry on Thanksgiving Day of this year to the Majestic Live Poultry Market, Borough Park.

Q. 55. What did the proprietor of the market say?

Mr. Kaufman: I object to that on the ground that it is incompetent and not binding on the defendants.
The Court: Over-ruled.
Mr. Kaufman: Exception. And on the further ground that it is clearly an act of intrastate commerce, assuming the worst that this witness will testify to.
The Court: Over-ruled.
Mr. Kaufman: Exception.

The Witness: He said I can't give you poultry. I said "Why don't you want to give me poultry?" and he said "When I give it to other butchers, not my butchers, the union sends me in a man; I have to pay for that—he sends in an extra man; that is why I can't give you poultry. That is, if he let me have the poultry, then the union would send their extra man and he would have to pay for him. For that reason he said he was afraid to give me poultry. He didn't tell me why they would send an extra union man. I am a new customer by him. He said when comes in a new customer, a new butcher, from another marketman, then the union must send him a man to work.

I have a butcher shop and I have been buying all this year by Louis Aronin and Sam Barkin. I have been buying all year wherever I want. This year I have been buying

from Louis Aronin and he closed his place in the summertime. Then I went to Barkin. When Aronin opened up his place again I went back to Aronin. I like to buy from him. I did not buy from anybody else this year. I was one time to the Majestic and he refused to give me poultry, about four weeks ago. That is the first time I ever went to the Majestic. I ta-ked to the man that everybody said was the boss. I don't know his name. In his market, I am a stranger. When I went to the Majestic right before [fol. 731] Thanksgiving Day I saw the same man. I call him Majestic, I don't know his name. Everybody said Majestic.

When I went to the Majestic the day before Thanksgiving I did not know that I was going to be a witness in this case. I got a subpœna the first time to come to this court on Saturday after Thanksgiving. Three or four weeks ago I was sent for by the Attorney General. He didn't tell me anything at all. He didn't tell me that I would have to be a witness in this case. I was in the criminal case a witness. When the Attorney General asked me to come to see him three or four weeks ago I had a subpoena. I went to the Post Office and saw Mr. Miller, Agent of the Department of Justice. He asked me if I was in the criminal trial and he read me before what I said. He told me I would have to tell that story over again. He did not tell me there would be a trial. He didn't tell me when I would have to tell it over again and I don't ask him. He said "When I need you, I will call you." So he did tell me that he would want me again and tell me when he wanted me again.

Up to Thanksgiving Day I bought poultry wherever I wanted. I had no difficulty. The day before Thanksgiving Day I went to the Majestic because Aronin disappointed me with turkeys. When I went to the Majestic at which time I claimed that somebody told me that he could not sell me any poultry because if he did, the union would put in another man, I did not go and tell that to the Attorney General until he sent for me. I have no time to see him. Friday is a busy day; Saturday I go no places—I have to enjoy myself. Saturday he bring me the subpoena.

Mr. Kaufman: Didn't you think that you should have found out the name of the person who told you this?

The Witness: If I could find this?

Mr. Kaufman: Why didn't you find it out at the time?

[fol. 732] The Witness: What good would it do me if I found out?

The Witness: The Majestic ain't got no retail stores. I am positive. He got one retail store in Coney Island. In Borough Park, he ain't got none. He got a lot of butchers.

The man I talked to is a short fellow, my size. He has got a moustache. He is about 35.

Aronin is still my friend. Everybody is my friend. He gives me the kind of stuff I like. I can't go every week, every day, you see. I call him up and he sends me. It is more convenient for me to buy in one place.

Mr. Kroppy: I move to strike out the testimony, on the same grounds previously stated.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 733] Benjamin Danziger, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given at a former trial in October, 1929, was read in evidence pursuant to stipulation as in the case of other witnesses:

Direct examination:

I work for defendant Morris Hellman. I have been employed by him about a year. I worked before that for A. B. Taits, Inc., starting in 1928. Before that I worked for Bernstein & Sorkin; same address. The Mr. Sorkin who was a member of B. Taits, Inc., was the same as in Bernstein & Sorkin. I attended three or four meetings of marketmen in my district about the summer of 1927. The first meeting was about June or July. One was held at Grable's Hall. The others were held at the home of Dave Hirshon. At these meetings most of the Brownsville marketmen were present, Hirshon, Morris, Gordon, I. Kaplan, Koslow, Kadin. Samuel Sahn, I believe, was at one meeting. Jacob Mintz, Resnick, Abe Franzel—a few more,

but I cannot think of their names. There were in all about twenty. They tried to organize a credit association. I cannot remember exactly what was said. I know the main feature of the meeting was to protect the money, to protect bad debts, about organizing for the betterment of the business. We spoke of prices to be charged, and about collecting one cent a pound. Hirshon and Morris Gordon spoke about the one cent a pound. I don't remember anybody else. This one cent a pound was for collecting a protection fund, supposed to be used for protection of buying and selling—against the unions. Hirshon said anyone who did not pay a cent a pound would have his poultry stopped. Hirshon said that they were going to use gangsters with it. He said that if we did not do as we were told we would be made to do so by force. I heard Hirshon say, "I have got the law in my pocket," several times. They talked [fol. 734] about people to whom we could and to whom we could not sell. They told us to bring a list of our customers. I did not bring a list of our customers. Whether anybody from B. Taits Company brought a list of customers I don't remember. I went to that meeting with Mr. Taits and Mr. Sorkin. He was there every time I went there. He was there during any discussions I have been telling about.

There were some lists of customers there. Who brought them I don't know. I did not take enough active interest to know. Customers that owed money were discussed. Telling what customers owe certain markets money. The markets were not to sell them. The ones that did not owe money would not sell them. We divide up the customers among ourselves and decide as to which customers belonged to certain markets. Only the customers that owed money were divided up. There were arguments about the other customers, with reference to what I don't remember. I think there was a committee appointed whose job it was to decide as to who owned the customers. Who were members of that committee I don't remember. I don't remember having a dispute on the subject of customers. I do not know whether any member of my firm had such a dispute. I had a private discussion outside of the meeting with David Hirshon as to what was happening at the meeting.

I told Mr. Hirshon that I could not afford to pay the money that they wanted me to pay, according to what was made up, and he said if I could not to get out of the busi-

ness. He wanted $75 a week, but I refused to give it to him. I paid it about twice. I did not pay after my conversation with Hirshon. He said it is costing $20,000 to put me out of the business and he would send more to put me out. If I didn't pay he said he would stop my supply. Bernstein and Sorkin and B. Taits got their poultry at this time from West Washington Market. I got some from the [fol. 735] railroad terminals, Delaware, Erie, New York Central. The Delaware terminal is at Weehawken and the Erie terminal at Hoboken, New Jersey. I also was getting poultry from New York Central, 59th Street. I paid the $75 a week for two weeks to Jacob Koslow and Lipkin. I did not have any conversation with them when they collected the money. I paid them in my place of business, B. Taits, Inc. I did not have any other conversations with them aside from the amounts we were to pay them when they came in. They never examined our books to see how much poultry we sold while I was there. Koslow told me what poultry was selling for. That's all I discussed with him.

It was understood I was to sell as close as possible to what he was selling. He did not ask me to do that. All he told me is what he was selling for. He told me what other people were selling for, too, if I asked him. I may have asked him. At these meetings we spoke about the prices. We would ask each other what they were selling for. And we sold as close as possible as the others. They spoke of selling anywhere from four to eight cents above the market. Something was said about keeping the retailers from doing a wholesale business. In case the retailer would sell the trade that we are selling now the unions would give them help as we have it. For instance, we have three or four men, the unions would give them three or four men. This way they have no men. I mean make them take additional men if they sold wholesale. Mr. Hirshon said something about an agreement with the unions to that effect. He said what I just said. At that time I was in charge of getting the poultry for B. Taits & Company. After I refused to pay the $75 a week to David Hirshon I came down the railroad yard and the union loaders refused to load me. The union loaders of all the railroad yards are members, I believe, of Local 560. Our union is called Chauffeurs and Teamsters; I don't know their name. I am

[fol. 736] not a member of a union. The loaders at the terminals and at the market may be affiliated; I don't know whether they are the same union. I tried to get poultry at the New York Central Railroad but at no other terminals. I tried in West Washington Market. At the Central I used to get my poultry direct from the cars. When I went down to the New York Central or West Washington Market to get poultry, I pulled my truck in to load and the loaders refused to load me. I believe it was about October, 1927. This happened the same day or next day, after I refused to pay the money for David Hirshon. The next morning we could not sell any poultry.

The men went out the next day. Those workmen belonged to local 167. Of the Chauffeurs, Teamsters, Stablemen and Helpers. I believe Charles Herbert was in my place of business that next morning. Charles Herbert belongs to the Shochtim. He told the Shochtim not to kill. I don't know whether it was the first time they refused to kill or the next time. There was once they refused and once they didn't refuse. The workmen went out. I had a conversation with the delegates of that union at that time, Tootsie Herbert and Harry Shomer.

I asked them, "What do you want?" I think they were together. One of them said I had one man too little; I only had three and he wanted me to have four. He did not want to talk to me at all for that matter. I do not think I said anything.

I had a conversation with Hirshon just about that time. Not with regard to taking on another man. He claimed I had that trouble because I was too smart, that is all. He said there was no trouble if I would pay that money.

At the time Shomer and Tootsie Herbert told me to take on another man they did not say anything about my pay-[fol. 737] ments, or about selling only retail. I did not get any poultry at all that day. There was one time I stayed two days without poultry and another time once; I did not know exactly what time it was. I remember having other workingmen sent down to me the next day, three other workmen; Julie Rosenstein, Sidney Rosenstein and Charley Gershowitz. They came in the next morning, Friday. There were three men sent down to me the first time and the second time four, a few months later. They fooled around instead of working. I don't remember ex-

actly what they did. They came a little late. Workingmen are supposed to report at 7 o'clock. It was late when they reported, I don't know what time. They threw a bluff at working. I remember sending Julius Rosenstein to the stable to get a horse. The stable was about three blocks away. He came back and said the horse was gone. I threatened them and about ten or half-past ten they said the horse was found. My deliveries that morning were very poor. They went into a restaurant next door after they came back and reported the loss of the horse. I walked in to see what happened to them. I saw them sitting talking to Koslow. There was Koslow and some other marketmen. I can't recall exactly what happened the next day. I sent Julius Rosenstein out to make some deliveries about 7:30 in the morning. He took a long time before he came back. Those deliveries should have taken him in normal course of business about twenty minutes. He came back about 10 o'clock. Pretty near the same happened every day. I complained to the same delegates I named before. I complained to the workmen about the way they were doing their work. Plenty of times they said, "You know we are under orders." Julius Rosenstein said to me, "You know we are not sent here to work; you know we have other bosses." And on another occasion one or more of them said, "You know what we are here for, why ask us to work." When [fol. 738] they went into the restaurant next door I saw them speaking to marketmen Koslow, Morris Gordon, Mintz and Hirshon.

On Wednesday morning I remember that two customers named Goverman and Kessler came into my place of business. Goverman's tires were cut outside, and he had an argument with Carl Firestone standing outside and everybody went out. I saw Weisler hitting Kessler. Weisler was working for me at that time. He was one of the four men that the union had sent down the second time. Kessler was one of my customers, and came to me to buy chickens. I do not believe I saw him strike Goverman. Julius Rosenstein did not have anything to say or do at that time. Goverman interfered when Weisler hit Kessler, and Weisler hit Goverman then. Julius Rosenstein didn't hit him. He was arrested, but he didn't hit anybody. Julius Rosenstein told Kessler he should butt out of this. Weisler hit Goverman. I don't remember exactly

now whether he knocked a tooth out. I do not believe I heard any conversation between Goverman and Firestone or between Kessler and Firestone on that occasion. Firestone was there. There was a crowd around, I do not remember exactly who was there. Koslow may have been there, I do not know. I had a conversation with Sam Silverman at or about that time.

I asked him to change the men. His position in the union was president. I do not believe he told me anything. He would not listen to me. That was on Wednesday. There were other customers in my place of business when that happened, outside of Goverman and Kessler. Two or three customers stopped coming after that happened. They said they were afraid to.

Something happened to my truck. One of the men went out with the truck and got stuck with it. The motor was spoiled. I did not use the truck again until we put a new motor in. I did put a new motor in afterwards.

[fol. 739] Cross-examination.

By Mr. Jacobson:

I have been in the poultry business about twenty-one years—in the marketmen's branch of that business. Before I was with Taits I was with Bernstein & Sorkin about a year and a half. Before that I was with Koslow and Miller. Hirshon's place of business was on Powell Street, one block from Koslow's place. Gordon's place was also one block from Koslow's place. Tait's place of business was on Powell Street. They are all in one section, all within a radius of a block and a half. And this restaurant that I talk about is on that block. That is the restaurant where all the market men eat. They go there every day. They have been doing that for years. There was nothing strange to see them in this restaurant on that particular day I was talking about.

The market men started to work 7 o'clock in the morning for about a year and a half or two years while this association was on. Before that time they started working 5 o'clock and worked until they got through. They would start earlier on a Thursday.

These men that run the market are men who put on working clothes and work. At the time of the meeting in the

summer of 1927 for the betterment of the business; there were plenty troubles in the business. Never was different; always was trouble. And there was always some sort of an association in Brownsville. Years ago the Brownsville people were associated together in what was known as the 26th Ward Live Poultry Association. Taits was in that. Our firm was in it. And after that they had another association. They have always had one in Brownsville for a great many years back. Among these troubles that the marketmen had was the question of credit. At the meetings the thing they all met for was to organize for the protection of credit. That was the chief topic of conversation. Coming down to these credits, I knew what the trou- [fol. 740] bles were. The marketmen sold to the chicken dealers, butchers, and also at retail. Now take the chicken dealers and the butchers as one group; they bought all over. They sometimes went out of the district that they were in, for instance a Brownsville butcher would sometimes go to Williamsburgh and buy, and go to almost any market he could in Brownsville. And by that means he could buy from ten or twelve different men, or fifteen or twenty, and you could not keep track of how much goods he was getting. It happened that these butchers would fail, and when they were getting ready to fail they would go out and buy from everybody they could, and the man that was ordinarily doing a business of about four or five hundred or a thousand dollars a week would fail for about twenty thousand. That happened often.

The chicken dealers did the same thing that the butchers did. I heard of such instances where a chicken dealer or butcher would open a store in Brownsville, buy a lot of poultry from the marketmen in Brownsville, close the store and then go and open another store in Williamsburgh. And sometimes they closed the store they had in Williamsburgh and then opened one in Brownsville without paying their bills in the first place. When they talked at these meetings about not selling to another man's butchers, they used the term not selling unless the man could produce a receipted bill. That receipted bill was the main feature. I understood that to mean that a butcher that was buying regularly from one marketman should not be sold by another marketman unless he could produce a receipted bill showing that he had paid his regular dealer. There was a little talk

about not selling him at all. It was mentioned that he should not be sold until he paid his bill in the other place. That was the main thing. Tait's was doing during the time that I have mentioned beginning with the summer of [fol. 741] 1927 up to 1928, about eighteen-twenty thousand pounds of poultry a week. It decreased as time went on. As soon as this organization was begun for the protection of credit his business decreased. I recall the term "overstocking" being used, carrying too much stock. That was talked about at those meetings. The marketmen would buy stock sufficient for their regular trade and in addition buy extra stock. I guess we all do it. That is what is known as run around trade. Run around trade is mostly bad money. People that really could not get credit in one place would run around all over for goods, and when we had stock left over, we would sell it to them. We would sometimes sell them the stock we ought to use for our regular customers. That very often turned out to be a bad debt. At this meeting it was mentioned that the people should not carry this extra stock because of its hurting the trade and resulting in bad debts. That is an old disease. It sometimes happened that we would carry stock for this run around trade and then they would not come in and buy it and we would have it on our hands; and when we had to carry poultry like that, we had to take a loss on it. It would shrink and lose weight. Some of it would die. When it dies a natural death we cannot sell it, we have to throw it away. That was one of the evils that we were discussing in these meetings of this organization.

Those are the two main features, for the abatement of these nuisances, that we talked about. After the summer of 1927, we decreased right away. That was the main source of trouble, main argument with Hirshon. That was Tait's trouble. I think we laid off one man then. When we had these meetings in order to overcome the situation, some of the marketmen submitted a list of butchers who were their regular customers and some did not. So it should be known which customer was accustomed to dealing at any particular market place. Plenty of them appeared upon several dif- [fol. 742] ferent lists. A number of marketmen claimed the same customer. We knew our customers by names and street address, mostly the latter. We would sell these customers on credit, not for cash. We described them in our charge slips in the first entry by the address of the store.

There were some customers whose names we knew, and the number of the store. That is the way we conducted our business. When this list was submitted and these customers were tolled off, each place having its own regular customers, then we were told not to sell those customers until he could produce a receipted bill from the man he was accustomed to buy from regularly.

They never paid up. It was found when this organization was going into effect that there were some people doing so small a wholesale business that they could not even make a living out of it. Some of the marketmen who were doing a larger business would then buy their wholesale trade. Taits was supposed to buy some of this wholesale trade, but he didn't have enough. He got it as long as he stayed in, as long as he paid. That is where the whole trouble was. When that dealer would take over some wholesale trade of another similar dealer, he could add to his own wholesale trade the other man's wholesale trade without even increasing his expense. And when I said there was talk of cutting down expenses, that is the way the expense was to be cut down.

There was a talk of joining together the business of two small men or three small men, so that a living could be made out of it for the expense of one. That was what the idea was. Taits was paying $75 a week. He was supposed to pay that for the extra wholesale trade that he was getting. It was supposed to be on a cent a pound but he worked it out differently.

We were doing eighteen to twenty thousand pounds a week when it started, and we were paying $75 a week only [fol. 743] the first two weeks. That was supposed to be a cent a pound. There was talk at the start of whether or not they could pay a cent a pound. Some men did not even want to pay a set price for the trade they were getting, that extra trade, when they were asked if they could pay as much as a cent a pound. I don't know what happened later. At the meetings it looked like everything was all right. Some marketmen said they could not afford to pay a cent a pound. At this meeting it seemed O. K. and the $75 payment by Taits was arranged at a later time. We never did pay a cent a pound.

About a week or two after these meetings it was arranged that it was to be $75 a week. We actually got

together on this protection of credit cases, and then afterwards were asked to contribute $75 a week, after our additional wholesale trade was allotted to us, even though we didn't get it. Our new customers did not come in. I was supposed to get a list of new customers from some other dealer, but I didn't get them.

From the summer of 1927, to 1928, August 1st, B. Taits, Inc., was a member of the Chamber of Commerce. I withdrew from the Chamber of Commerce after the trouble with Hirshon. The operating expense of Taits, Inc., was about $800 a week. That averaged about four or five cents a pound without shrinkage. Shrinkage is a big item of expense in the business. And so are bad debts. That five cents a pound is without bad debts. To cover our operating expense and the shrinkage and losses on bad debts we must charge six cents at least a pound above cost. If we sell at less than six or seven cents a pound above cost we are losing money, and getting up at 5 o'clock in the morning to do it. I am talking about the summer of 1927 through 1928. We were selling at two cents a pound above cost plenty of times, when we had stock left over. If we stocked up for [fol. 744] this run around trade, and if it didn't come in and buy, then we had to sell that out at very close margin, at cost also, and we would have to lose money in order to get rid of it to avoid shrinkage. That is why our business is no good. Our competitors, who were within a block of us, would have to meet that competition and sell down below cost.

We had such instances as this: When a marketman would sell to one of his customers at say three cents a pound above cost, and the next door marketman or in the same neighborhood would sell to another customer in that neighhood at five cents a pound above cost, then that customer who paid five cents a pound above cost would insist on taking off two cents a pound to be even with the other fellow. When I say above cost, I mean what the marketman pays to the receiver in West Washington Market.

Cross-examination.

By Mr. Kaufman:

The Witness: I picked up poultry at the Jersey terminals pretty near every day. The poultry is taken out of the cars and put in crates and then purchased by the market-

man. We buy it from the coops or crates that the receivers put it in before they deliver it to the marketmen. We call that direct the cars. It is taken from the cars by the receivers and put in crates by them, and from those crates it is delivered by the receivers to the marketmen.

Our men went out on strike, the first time, somewhere in September—October, 1927. We had three men at that time working for us, one chauffeur and two men who moved poultry from place to place inside and delivered with a horse and wagon. Those three men were union men. They were Abe Kutler, Willie Swotnick, and the third I don't remember. They didn't tell me they were going to leave. I found out that they left when they didn't show up. I worked myself. Later that morning I communicated with the union and asked for new men to be sent us. I believe [fol. 745] the delegate was down. I saw him outside.

Our place of business was in the general locality in which all of the poultry dealers had their places of business. Sometimes the delegates from the chauffeurs and the helpers' union was in the neighborhood there. I looked for him and told him that the men left me and I asked for new men and he sent us these three new men, Charles Rosenstein, Sidney Rosenstein and Gershowitz. They stayed just a few days. I believe they only finished a week. They left and I got my old men back. That was in October, 1927, when I was with Bernstein & Sorkin. During the week that these three men were with me at Berstein & Sorkin's, they took it easy, but they worked. That is the only complaint I had during that week, that they did not work as fast as I thought they ought to work. Before the three men left the employ of Bernstein & Sorkin, I had Mr. Sorkin's son employed there as a helper. He was not a union man. The three men refused to work for me because he was not a union man. That is what they claimed later. When the three men came back after I discharged the three men supplied to us by the union, I did not continue to have Mr. Sorkin's son work for us. That is one of the conditions the three men insisted on before they would come back.

This incident in October of 1927 was the first time that I ever had any trouble with the union. Then the three old men continued to work for us. Then there was a later time when those three men again went out of our place. That is when Taits was in. Taits came in a few months later, I

don't know the date, about January, 1928. Taits was in before we had this difficulty with these men, only about a month or two. They may have made demand for overtime. On Friday morning the men are supposed to come to work at 5 o'clock in the morning instead of 7 o'clock in the morning, and for those two hours they are entitled to extra wages. I believe I paid that. These men complained [fol. 746] because I stopped paying them for those extra two hours on Friday morning, but they told me everything later, after they left, not before. They made these complaints to me and told me what they wanted when I started asking the delegate what was the matter.

The second time that our three men went out, I again got in touch with the delegate of the union and asked for new men and I saw the delegate around the market. I told him that our men went out and I wanted new men. At that time the delegate told me I ought to have four men and he sent me four men, and the four men that he sent me were the two Rosensteins and Gershowitz, whom he sent me once before, and in addition Arthur Weisler and Willie Swetnick, one of my old chauffeurs. They were men whom I knew had worked in the business for a good many years.

It was the second time they worked for me that I complained they did not work hard enough and that they were stalling around. I complained because they told me our horse got away and was not there. That horse had never went away by himself. He was full of life but that did not make him run out of the stable. This horse had never previously run away while someone was trying to harness him up.

On the second occasion when the union had sent these four men in to us they took a little time off in the morning and I saw them in that restaurant, and some marketmen sitting at the next tables. When I was not able to load my truck at West Washington Market, it was the second time, about the first part of 1928. When my men went out the same day I loaded it once myself; I think I stood one day without poultry and then loaded it the next day myself, with Zalkin's son; they loaded it the next day. That is all the trouble I had with them, with the loading up. I had that set of men there for quite awhile. I think I had them a [fol. 747] few weeks. During that time they fooled around, but they did all the work. The men have a breakfast time off after the work in the morning is completed. There is

no fixed time for them to go in for breakfast. They go as soon as they get finished with the early morning work. That is the time that they went into the restaurant that I complained about. When Mr. Shomer came in there to collect the check for overtime, we had some argument about it; he did collect once a check, I don't remember exactly what it was."

Mr. Kroppy: I object to it and move to strike out all the testimony on the grounds previously stated.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 748] HENRY DREXLER, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given at a trial in October, 1929, was read in evidence pursuant to stipulation in case of previous witnesses:

Direct examination:

The Witness: I am a shochet. I have been employed by Mr. Edelstein, who was on the stand just before me, about seven or eight years. I remember I had a customer named Liebowitz during the fall of 1927, and several men came into my place of business early in the morning when I came and started to slaughter. Then Mr. Leibowitz came. I started to slaughter for him, and then several men came in, and they stopped me to slaughter. I don't remember if they said anything to me. All I know they stopped me from slaughtering for Liebowitz.

Cross-examination.

By Mr. Shalleck:

The Witness: I am now a member of the Official Orthodox Shochets' union in good standing. I know the union rules of the shochets to kill. The doors were locked while I was killing before union hours. When these men came in, I don't remember whether they threatened to report me to the union unless I complied with the union rules and

ceased killing before hours. I do remember that they once reported me because I came to work before the union hours. I was sent down to work as a retail shochet. If I were to kill for Edelstein and Leibowitz, I would kill more than fifty coops and it is possible that it might be wholesale business. There were different butchers, that was the seventh.

Mr. Kroppy: I object to the testimony of this witness on all of the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 749] MICHAEL J. GAVIN, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given at a trial in October, 1929, was read in evidence pursuant to stipulation as in the case of previous witnesses:

Direct examination:

The Witness: I am a New York City policeman. On or about the 28th day of May, 1928, I rode a truck belonging to B. Taits & Company down to West Washington Market. On that occasion a man named Danziger and Sorkin's two sons were with me. We arrived in the West Washington Market about twenty minutes past seven; when we arrived I observed a large number of men, fifty or more standing on the corner. These men, when the truck stopped, came down close to the truck. I pulled my gun from my holster and told them "Stay away," or I would give them the business. They kept on coming, and I raised the gun and told them I would shoot and when I shot I would shoot to kill. They moved back. The three men, Danziger and Sorkin's two sons, unloaded the chickens from the truck that was fully loaded onto their own truck. While doing so there were several chickens got loose from the crate and jumped to the street and strut about, while several men from this crowd gathered in back of the chickens, and they walked around the corner, and when the chickens walked away, about 75 feet, one of them, a man came there with a stick and struck the chicken. The chicken lay as if dead. I was

standing in the rear of the truck and I observed a man attempt to lift the hood of the truck which I was guarding. I drew my gun from the holster and told him to go away, which he quickly did. The truck was loaded and we were leaving the market, and a number of these men shouted threats to the men that was on the truck, as it was leaving the market. They hollered, "All right, scabs, we will get youse." I recognized a man by the name of Wiener, and [fol. 750] Tootsie Herbert (witness leaves stand and goes to the center of the court room) (identifying the defendant Arthur Herbert). (Wiener stands up.) I never saw that man before. I don't recognize him. I saw a few cars parked in the market. On the return I stood on the running board watching if any of these cars were following. When we arrived at B. Taits & Company I observed one car which stopped about 75 feet from the car. Only one man approached, came down to me about 10 feet from the truck. I walked over and asked him the nature of his business.

Cross-examination.

By Mr. Kaufman:

The Witness: When we were back in the market on this truck there was a crowd of about fifty people. They were not in formation for this truck to come along. They were standing about. There were a lot of other people in the market beside those fifty men who were standing about. Some had white coats on, some had over coats on, some caps, just a large group. There was just the one group. Some had spring overcoats. I saw Tootsie Herbert before this one occasion. I saw him several times before in the Prospect Market. He was pointed out to me. I was chasing a fellow driving a chicken wagon to get over so traffic could get through. He said, "All right, I am talking to one of the delegates." I said, "Who is the delegate?" He said it was Tootsie Herbert. I rode the truck in May of 1928. Tootsie Herbert was pointed out to me as being a delegate of the union in April by the fellow driving the chicken truck. I do not know who he was; and when I was told the name Tootsie Herbert I remembered it. In May, when I went to the market, there was no scene, only when the truck stopped all the men started to walk towards it. I took my gun out. I expected trouble. There was no ar-

rest. Whenever I see a big crowd of men in a case like that I pull a gun; in a case of a strike. There was a strike on at that time, from what I understand, and just to be on [fol. 751] the safe side I pulled my gun. If there was a general strike of truckmen in the market at that time it was unknown to me. I didn't observe any other policemen there.

There was no serious trouble took place at that time. The only trouble I saw was this fellow attempting to lift the hood and the chicken that was hit that I saw running away, and the driver refusing the load of the men on No. 2 truck. I did not make a report of this situation, it was not necessary. And as far as Tootsie Herbert was concerned, he was pointed out to me some time in April of 1928 and I saw him again in this big crowd in May of 1928. And they were the only two times in my life that I ever saw him.

Mr. Kroppy: Same motion to strike it out.
The Court: Same ruling.
Mr. Kroppy: Exception.

[fol. 752] Sam Bernklau called as a witness, etc.

The following testimony, given at a trial in October, 1929, was read in evidence pursuant to stipulation as in case of other witnesses:

Direct examination:

The Witness: I have been a butcher in Coney Island, for two years. During the fall of 1927 I bought in Morris Gerber's. After November 27, 1927 I bought from Morris Gelb about three or four months and then he could not get any more poultry. Then I went on the East Side and I bought from a marketman on Rivington Street for a couple of days; I really don't know his name. He really had retail stores that he sells to customers.

About this time I had a conversation with Moe Rosenstein. He asked me to kill poultry in Coney Island, and I will get it for the same price as I pay outside. Every couple of days I used to see him because he was around the section. He did not say anything else. I also killed in Jersey City in the market of Sam Davis. I killed there

from about November, 1927, to March, 1928. Then I went back to Coney Island to kill stuff. Before I went back to Coney Island nothing happened. Sam Davis sold me as much as I wanted; he never refused and never told me he could not sell me.

When I went back to Coney Island I dealt with the market of Abe Harrison, Inc. Abe and Sam run it. They charged me five or six cents. Moe Rosenstein asked me to come back to kill in Coney Island and I came back and went over to Harrison's and asked what they are going to charge me. They said, "According to the week, five or six cents, the circumstances of business." They charged me five or six cents all the time from then on.

I attended a meeting of the marketmen and butchers during the month of June, 1928, on 28th Street, Coney Island. [fol. 753] The marketmen who were present at that meeting were Morris Gerber, Abe Harrison, Scull and Al Berman. There were no marketmen outside of Coney Island. I was on the committee of butchers at that time and the butchers called the marketmen to come to us to see what we could do to straighten business matters out between butchers and marketmen. What we asked them was, they should not allow the chicken dealers to undersell the butchers. For instance, when the butcher pays about 30 cents, and the chicken dealer sells it for 32 cents, that hurts the butcher from doing business. That's about all, and we could not do nothing with them because they have had no control or connection with any chicken dealers, so they could not accomplish anything. That was just what the last conference was. It broke up and we never had it since then.

In our own meeting we butchers decided to pay a penny a pound from the poultry that we buy of the marketmen to a fund. We asked that the butchers should give half a cent on the pound and the marketmen should give the same for all poultry that is bought, and we shall have a fund, and in case the chicken dealer tries to harm us, we will see that a neighbor is fighting for the same price he is selling it. The marketmen say they have no control over any of those things. Nothing was done.

When I went over to Jersey, I met Moe Rosenstein at my store when I came back. He asked me, I had promised to come to kill in Coney Island and I did not keep my word

to him. I had promised that I will go to him and kill poultry in Coney Island. I have been to several butcher stores at times when Moe Rosenstein had a conversation with them to kill in the Island. I had been dealing with Gerber about ten years; I left him because his prices was too high comparing with outside. His prices were eight or ten cents, and I paid outside of Coney Island five or six.

[fol. 754] Cross-examination.

By Mr. Jacobson:

The Witness: I was president of this butchers' association at Coney Island. Rosenstein worked for our association about a month or two. Mornick was a member of our association and also Finkelstein. Rosenstein attended meetings of this butchers' association and Mornick and Finkelstein were present at those meetings. Rosenstein got his salary from our association.

Redirect examination:

The Witness: Rosenstein was employed to prevent the butchers from having price signs in their windows, and just to prevent trouble from one to another; that is about all. We hired him in the spring of 1928. Moe Rosenstein attended the butchers' meetings just to straighten out matters between the marketmen and the butchers, and then when he went away from the marketmen he was working for the butchers.

He started to work for the butchers right after the marketmen's association was broken up. Our own butchers' association had a rule that butchers should not have signs with prices in the windows. That had nothing to do with the marketmen.

By Mr. Jacobson:

The Witness: We have had that rule among the butchers since we have had the butchers' association, but we were unable to control it until after the marketmen broke up.

Mr. Kroppy: I make the same motion to strike it out as heretofore urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 755] The following testimony given by the witness on this trial: . . . .

The Witness: I am a butcher in Coney Island. Prior to September 19, 1931, I was paying above the market quotation for poultry, about three or four cents a pound. On September 19th, the wholesale market went from 20¢ to 24¢ and butchers were charged 34¢. All of the prices went up at the same time all over Greater Brooklyn and New York. I was buying poultry at that time from Morris Gerber, a marketman in Coney Island. I paid for my poultry 34¢ a pound when the market price was 20¢, and Gerber told me he was charged 4¢ premium which would be 24¢. He said "That is the price all over New York City. Morris Kleiger, his partner, was not present when Gerber said that. Nothing else was said.

I went back to him on September 22nd, 1931 and bought poultry again. I was charged about the same. I said that the price was too high. Tliis is not the time for it. "Well," Gerber said, "you can go over any place you want but the price will be the same." That was the Jewish New Years and every butcher that came that night to the market was glad to get the poultry. Morris Gerber said "Prices is the same all over." We all started to kick about that change, too much above quotation and he says "Go any place you like. Nothing is stopped for you. If you go anywheres you like" that means in any market in Greater Brooklyn or New York, "prices are the same all over." Nothing else was said.

Then we tried to organize butchers not to buy their poultry and that took as far as October 28, 1931.

On that day there was a meeting in a synagogue in Coney Island. Most all the butchers in Coney Island were there. I called the marketmen to the meeting, Morris Gerber, Abe Harrison, Jacob Harrison and Joseph Scull. That is all of the marketmen in Coney Island. Joseph Scull said to me that he is not the boss over the slaughter house, the Exchange on West Washington Market rules, conducts his business. That is all he said. He did not say anything about prices.

About prices I spoke to Abe Harrison, I says "The way conditions are today we cannot conduct our business; you are charging us 10¢ or 12¢ above quotation and you go to work and give chicken stores 4¢ or 5¢ or 3¢, we don't know

how much you are charging them, and they go to work and take the butchers' business away; they are simply left [fol. 756] without anything." I offered to him right from the next day, October 29, to buy his poultry straight as they receive it from West Washington Market and we should pay the prices 5¢ a pound above quotation as the chicken dealers. And that he should charge it for himself what we were supposed to pay in order not to hurt our business. He refused that offer and he says he is not in a position to make any prices with us because the slaughter house is not conducted by him but is conducted by the Exchange in West Washington Market. This was the conversation between myself and the market people and we continued it up for three or four hours and that is the end of it. That was at the meeting. No one else said anything about the Exchange fixing prices. Nothing was said about how the Exchange controlled these markets, and I don't know. Morris Gerber didn't talk. He said that whatever Abe Harrison says, it is O. K. with him. Morris Gerber is not a partner of Abe Harrison. They had separate markets. Nothing else was said at the meeting. I asked Morris Gerber why they charged 10¢ during all of the time, September 19th to October 28th and he said because we don't slaughter the poultry as they receive it from West Washington Market. Nothing was said about an agreement among the marketmen, and I did not ask them. Morris Gerber said that they all came together, and they are charging the same price, everyone of them.

Q. Did he say anything about an agreement among them?

A. No.

Q. But he said that all of the marketmen were charging the same price?

A. The same price, they came together.

Mr. Kroppy: I object to that, except to the extent that it is binding on Morris Gerber or whoever it was that made the statement himself and not binding on the other defendants.

The Court: Over-ruled.

Mr. Kroppy: Exception.

The Witness: I asked the marketmen to give better prices to the butchers, and to come to an agreement that

they wouldn't charge the butchers so much as 12¢ because the butcher is being chased out of business and their answer was, as I said before "They can't do anything; it all belongs to the Exchange."

I know Louis Lipkin, a bookkeeper of Morris Gerber's. I talked with him when I attempted to purchase poultry there.

[fol. 757] The Witness: There was a meeting of Coney Island marketmen on October 28, 1931. It was on a Wednesday; I am not sure of the date. The marketmen attended that meeting. They were Joseph Scull, Abe Harrison, Ben Harrison, Morris Gerber. Prior to this meeting there had been no change of the price of poultry in our district for several months. There was a change in prices about two weeks after the meeting. The price before was 3¢ to 4¢ a pound above the wholesale market quotation. At the time the meeting was held the price the marketmen of Coney Island were charging the butchers and retail dealers was about 8¢ to 10¢ above the market quotation. It went into effect on September 19, 1931.

The price on September 18, 1931, was about 3¢ to 4¢ above the market quotation. All the marketmen charged 8¢ to 10¢ from September 19, 1931, until the beginning of November, 1931. Nothing was said about this price of 8¢ to 10¢ above the market quotation at the meeting or within a few weeks prior to the meeting. I did not ask any of the marketmen why the price was 8¢ to 10¢ above the market quotation. At the meeting I offered the marketmen to make it 5¢ a pound on a straight killing of poultry as they received the poultry from West Washington Market. I acted as chairman of that evening, and represented the butchers of Coney Island.

Abe Harrison said the marketmen can't make no change in prices. He said prices is up to the Exchange; it is up to the New York Live Poultry Exchange and West Washington Market to change prices. It isn't up to them. He did not explain further what he meant by that. He did not say whether the Exchange had any control over the prices of the marketmen.

I do not remember whether or not there was any investigation going on at that time. There was some newspaper publicity as to an injunction suit about October, I believe. I saw it in the papers that the Attorney General is trying to get an injunction against the marketmen in Greater New

York, that is about all that I knew. I did not hear any of the marketmen say anything about that injunction. I [fol. 758] did not hear any talk about it.

I know Louis Lipkin the bookkeeper in Morris Gerber's market. I talked to him after September 19 when the price was increased to 8¢ or 10¢ a pound:

Mr. Kroppy: I object to that testimony regarding conversations between this man and the working men in the place; it is not binding on the defendants.

The Court: I can't tell yet; it doesn't appear to be competent.

The Witness: On September 19, 1931, I was charged 34¢ a pound and the market quotation was 20¢ to 24¢. I said I think it is a little too much and he said the prices are all over the city the same way.

Mr. Kroppy: I move to strike out the last testimony, if your Honor please.

The Court: Denied.

Mr. Kroppy: Exception.

The Witness: Morris Gerber did not say anything. I did not ask anyone else in the market about the price. I said that I am going to try to get it at a different price and Lipkin said "Well, it is up to you to go, but I guarantee that prices are all over the same." He did not say anything further.

I will explain that most of the marketmen do not do business direct themselves but through their bookkeepers because they are busy doing their buying and 90% of the business that you are doing is through the bookkeeper who is salesman and everything.

About ten days after September 19, 1931, I heard Lipkin say to a butcher "What difference does it make where you buy; the profits goes the same?" "Whether you buy by us or somewheres else, we get your profit in addition, from the expense." He said "We get it just the same". He said that meant all the marketmen are to go—are together. Mr. Lipkin said "No matter where you buy it", he said, "profit above all expenses go to us." That is the only [fol. 759] words that were said.

Mr. Kaufman: I move to strike out the statement made by Lipkin on the ground that it is incompetent and not binding on any of the defendants.

The Court: Denied.

Mr. Kaufman: Exception.

The Witness: Abe Harrison at this meeting said it is not up to them to conduct the prices; it is up to the exchange. The other marketmen present did not say anything at all after Abe Harrisson made that statement, and I did not ask [fol. 760] them about it. They did not raise any objection.

Cross-examination.

By Mr. Kaufman:

The Witness: I am a butcher, and a butcher shop, in addition to selling slaughtered poultry, sells all kinds of meats. The butchers have been complaining that the chicken stores sell cheaper than the butcher shops. There has been some conflict or difficulty between the butchers and the chicken stores. The butchers have an association in Brooklyn, and I am the president of it for about 5 or 6 years. There is no difference in buying as between the chicken man and the butcher store, except that some of the chicken dealers buy in much greater quantity than the butchers. There was some conflict between the butchers and the chicken dealers because the chicken dealers could sell a little cheaper than the butchers, and that was the reason that I, as president of your butchers association, called the meeting in Brooklyn, about the 21st of October. I did not call this meeting of the butchers about the time that I read that the Government was trying to get this injunction. That publicity absolutely had nothing whatever to do with it. At that meeting I, as president of that association, asked that Mr. Harrison and Mr. Gerber and Mr. Scull should be present as our invited guests. As chairman of the meeting, I complained to the marketmen, and said there is no reason why we butchers should be charged any more than the chicken dealers. Mr. Harrison, Mr. Gerber and Mr. Scull did not tell us that we are not entitled to the same price as the chicken dealers. That was something that we wanted to accomplish, but they did not agree with us. Up to September, 1931, we were paying approximately 3 to 4

cents above the market. We could buy from anyone we wanted. There was no difficulty at all. Nobody told us where to go. We could go wherever we pleased and buy as much as we wanted to. Nobody interfered with us or told us when or from whom to buy. On the 19th of September, the price that I was asked to pay was 10 cents above the market. I am sure of that. I was buying from Gerber during the week of September 19th and no one else. The [fol. 761] paper you show me is a copy of the statement that I got for the week commencing September 19th and ending on September 25th. The first item here under date of September 19th is "206 fl." That is fowl at 34¢ a pound. I testified that the market quotations for that fowl was from 20 to 24 cents. I got those prices from a Jewish newspaper that always compares with the English paper on the prices. There is a recognized paper in the produce business called "The Producer's Price Current" but so are the others. I have not got that paper. I just remember that The Producer's Price Current for Saturday, September 19th, which you show me has no price opposite fowls colored heavy, but there is a little notation there by way of an asterick in place of it, which says "sold at premiums 1 to 2 cents" and "fancy heavy fowl at an additional premium equivalent to 26 cents." When that paper says the cost of that heavy fowl was 24 cents with a premium of 2 cents I dispute that newspaper. I got another newspaper, but I had no interest to keep it. I went to the West Washington Market on the 19th of September to note the prices. I asked the people that I know in the market, that I have been buying poultry from. I asked Mr. Gerber what he paid for 206 fowl that he charged me 34 cents for. He did not tell me 27 cents. I said that the fowls which are referred to on this copy of a statement from Mr. Gerber to me were classified under "Fowls colored heavy," and then you called my attention to the asterick, and I read the notation. I claim that the fowls that are referred to as 206 pounds fowl at 34 cents is under a different classification than fowls colored heavy. It is classification 22 under the name "chickens colored average." I am sure of that. The next item on the copy of the statement from Mr. Gerber shows 54 fowl, 29 cents. That is Leghorn fowl. When they refer to "chickens" they mean spring chickens, and when they refer to "fowl" they mean the heavy chickens. In The Producers Price Cur-

rent of September 19th, 1931, chickens colored average at 22 cents refers to spring chickens of all sizes—at this time of the year. I said a moment ago that when they referred [fol. 762] to "chickens" they meant spring chickens and that when they referred to "fowl" they meant the heavy chickens. When they referred to "chickens colored average" they mean spring chickens, so that when I bought the 206 pounds of fowl at 34, I was not getting the spring chickens. The third item on this Morris Gerber statement shows 220 pounds of broilers at 34 cents. Broilers were different from spring chickens at that time. A broiler is from — pound to two pounds. Then a chicken is from 2 to 5 pounds. A fowl is from 3 to 5 to 6 pounds. We have three classifications, broilers from 1 to 2 pounds, chickens from 3 to 5 all sizes. The fowl is separately.

Q. Where does the fowl begin and the chicken end? See if you can't tell us this over again. What do you call a broiler?

A. From 1 to 2.

Q. What do you call a chicken?

A. A chicken?

Q. Yes.

A. From 3 to 4 to 5.

Q. And what is a fowl?

A. The same size.

Q. What is the difference technically between a fowl and a chicken?

A. You should ask that? I don't know the difference. I think you do.

Q. Isn't a fowl a hen?

A. I don't know. The kosher department takes care of that.

The Witness: Going back to the statement of Morris Gerber to me, the first item of 206 pounds of fowl comes, as I claim, under the classification, in the Producers Price Current under date of September 19th, of "fowls colored light to medium," and the quotation in the paper is 21 to 22 cents. If my description is right I was charged 12 cents above the market. I am sure of that.

I don't know what Gerber paid for those fowl. I did not ask him. The 19th of September was the beginning of the

Jewish Holidays. At that time there is not usually a scarcity of chickens in the market, and there was a scarcity at this time. There is never scarce poultry on the Jewish New Year's in Greater New York. The prices are not higher at the time of the holidays. There was no greater demand for poultry on the 19th of September which was two [fol. 763] days before the Jewish Holidays. When I paid my bill to Gerber I did not take off a penny and a half a pound and I am sure I did not get an allowance. I did not get any allowance from Morris Gerber at the rate of a penney and a half a pound for a period of three weeks. I pay my bills by check.

The marketmen buy from West Washington Market in large quantities; he buys a truckload at a time and moves it from West Washington Market in to his slaughterhouse, and he keeps it there sometimes one, two or three days. During that period, he has to feed the poultry. Any risk for loss of any of the poultry or any loss of weight is at the risk of the marketman. There are a good many fowl that cannot be used with the Jewish ritual, called "trefe." That is entirely the risk of the marketman. When poultry becomes "trefe" it cannot be used for the Jewish trade, and the marketman has to sell those for whatever he can get for them. Sometimes he cannot get anything for it. In addition to that, the marketman buys his poultry alive and before he sells it to the butcher, he has it slaughtered by a rabbi with the Jewish ritual, and he pays the cost of the killing. Any loss of blood is something that the marketman has to carry. So far as the butcher is concerned, he gets his weight after the poultry is slaughtered and its loss of blood is completed. Those shrinkages are matters that the marketman must take care of himself. I do not say that all that a marketman should charge is 3 or 4 cents above the quotation and that that is my idea as to how he should run his business. That is not all the profit that I think he ought to make. The shrinkage to the marketman is between 1 and 2 cents a pound from the time he receives it until he gets ready to sell it. At certain times of the year the shrinkage is only 1 cent a pound, and at other times of the year it runs as high as 2 cents. By shrinkage I mean the loss of weight of the poultry as a result of standing and slaughtering, and that 2 cents a pound does not include rent of the market or salaries or any of the items of overhead. It does not include any loss on

account of credit, extended to customers. I know the losses of marketmen are sometimes very large. That 2 cents a pound does not cover any of those items. I know what it costs a marketman to do business. I know what it costs [fol. 764] every one of them. I don't know what their losses on credits are. The chicken dealers and the butchers buy from the marketmen slaughtered poultry, the same thing.

Mr. Kroppy: I move to strike out the testimony of the witness on the ground that it is hearsay and not binding on any of the defendants, based on intrastate transactions only, and on all the other grounds previously stated.

The Court: Motion denied.

Mr. Kroppy. Exception.

[fol. 765] BENNIE SANDLER, called as a witness on behalf of the government, being first duly sworn, testified as follows:

The following testimony, given at a trial in October, 1929, was read in evidence pursuant to stipulation, as in case of other witnesses:

Direct examination:

The Witness: I have been a butcher about 25 years in Coney Island. In the summer of 1927 I bought outside in Brownsville, sometimes in Coney Island, before they incorporated. I did most of my buying from Morris Gerber. I did some buying from Mintz, before the corporation.

In the summer of 1927 I went to Jake Mintz' market and he refused to give me stuff. I did not know that this was Arkie or somebody else, but a red car was following me for a long time, in the morning, and I knew they were after me. So when I went down to Powell Street and Sutter Avenue, Brownsville, I was stopped off by Arkie—that was what I heard them call him by name, Arkie. He told me to go back to Coney Island. So then I went back to my store, and I see coming along this machine. I left my machine in front of the door and told the man to go down to Coney Island. This fellow had a place in Mermaid Avenue some place. I stayed back in my store and Arkie was standing by and two men were watching me. Then I jumped in a taxicab and went

away and purchased my stuff. When I got back I found that he is standing and he says, "Well, you got me, you were smarter than me today and you got th- stuff, but you would not get any tomorrow."

(Witness identifies Arkie as defendant Weissler.)

Arkie followed me the next morn*ign* again when I went to a market in Borough Park owned by English. He told me I shall go away and I saw Arkie there. So I turned back with the machine. I didn't go into the market to talk to [fol. 766] English. I was talking with him by the telephone and he made out he would deliver to another butcher. He delivered to another butcher, and I took the chickens from there.

Then I was dealing with a man a few times and he stopped all at once. He said they found out where I got merchandise and he stopped giving me merchandise because they were going to stop him from getting poultry in West Washington Market. From there I went to Ozone Park, where I got stuff for quite a while. Then the same thing happened. They found me out there. I don't know the people who followed me there, but I heard they were talking to not giving me merchandise, and a man said he has got to give me stuff but tomorrow he wouldn't give it to me. The next day I didn't get it there. Then I went to some place in Brooklyn. I couldn't tell you where. I was going all around the town to get stuff.

Bass gave me poultry. One morning I came in and saw a man they call Lipkin and another man they call Koslow. They didn't say anything to me but walked out of the market, so Mr. Bass said he cannot give me more stuff except the stuff I killed now. Then I found out a place where to get stuff in Jersey City.

I was followed and watched by the door in front of my house day and night by Moe Rosenstein and Abe Newman and a fellow by the name of Phillips. I don't see Phillips here. I was followed to New Jersey for a long time. I didn't pay attention because I used to go all the time—if they followed me or didn't follow me as I didn't mind. The only thing I minded was to get away from them, they shouldn't find out where I was killing my poultry, I lose them on the way. This happened for about six weeks.

I bought from this place in New Jersey five or six months time. Then one morning I came down to Jersey and I

found there was a couple of officers waiting for me. They [fol. 767] say they got a couple of boys pulled in and waiting for me, to see what to do with them. So they took me in the police station in Union City and asked me if I know the boys and I said I know from seeing them. I did not get poultry after that, but Goldsmith gave me one day more poultry. Before I stopped buying from Goldsmith I was locked up at Weehawken. One day I was pulled in at Weehawken with a lot of killed stuff. These two people who were locked up were the same people that had been following me but I didn't see them in New Jersey. I never expected they find me out in New Jersey. When I got there I found these men.

One day I saw Abe Newman and Philip standing in the Press Building there on 39th Street, Union City, near the market where I was buying at half past four or maybe five in the morning. I don't know where Philip is. I cannot recognize him here. Nothing happened. I got my merchandise and went away. And the next day I got my stuff, too. That is the time they stopped me, when them boys were pulled by the police a few days later. Goldsmith called me up and said, "I cannot give you any more merchandise because they stopped me off in West Washington Market."

Mr. Jacobson: We object to what he was told by Goldsmith.

The Court: Who is Goldsmith?

Mr. Oseas: Goldsmith is the marketman to whom he went to buy poultry and who thereafter said to him that he could no longer sell him poultry.

The Court: I will allow it.

Mr. Jacobson: Exception.

The Witness: After Goldsmith refused to sell me, I went to Ozone Park, Long Island, and I got for quite a time there poultry until they stopped me again. I don't know who stopped me; they said we cannot give him no more merchandise because somebody found out he is getting my stuff again, and he has to stop it. Then I dragged around [fol. 768] in some market for a nice few weeks. Then I got stuff and Mr. Rice called me up I should come back to I. Goldsmith, and he is going to make him give me merchandise. Mr. Rice is the special assistant sitting here.

I got merchandise from Goldsmith after that. After that I killed by I. Goldsmith.

Then one morning I come in there and start to kill stuff and there was Moe Rosenstein. He said to me, "Well, we find you again." I don't know what he is talking to the marketman. He asks me to come back to Coney Island, he is going to give me a good deal, the people are going to treat me good, and he brought me back to the Island, to Morris Gerber and Joe Scull, and Klieger. They agreed to give me merchandise and the agreement was that we made up and soon Moe Rosenstein went out of the place and I had the same old treatment they used to give to the rest of the butchers. I refused it and said I will have to get my poultry outside again, because the fellows are not giving me a break. After I came back I don't know how much they charged. There was no limit to what they charged—10 cents a pound, 12 cents, 14 cents on a pound, and some kind of chickens 18 cents on a pound also.

After that I went outside again. I couldn't mention the name of the market because I don't know where it is, I can't remember such a long time. I bought outside of Coney Island after that until the corporation broke up. When they brought me down, they made up they should let me handle my merchandise, and they kept me until all the butchers went out of the place there, and I asked, "Why you keep me?"—because it was now still and I have no use for the poultry, and they said, "We make you wait"—Mr. Scull, he said, "We got you on your knees," and Mr. Klieger said, "We got you by the neck. This time I am going to suck your blood."

One morning I went out from Brighton Beach Avenue [fol. 769] and I saw a taxicab and a Chrysler machine following, monkeying around with the lights, and I stopped my machine and started to go slowly, and they chase me to Prospect Park, and I stopped in front of the police station booth, so a cop run out and asked, "What's the trouble?" and I said, "The people are following me, and I don't know what they want," and he made them get out of the machine. He said he was Charlie Herbert. I couldn't recognize him. It was the first time I saw the man. That was early in the morning, too.

Mr. Kaufman: Move to strike out all the testimony with respect to this incident.

The Court: Denied.
Mr. Kaufman: Exception.

The Witness: Morris Gerber never interfered with me with any talking at all. I never had with Morris Gerber anything. When I was told I had to buy there, Herman Berman was by the scale. Al Berman was there—I saw him the rest of the times but I didn't see him that morning there.

Cross-examination.

By Mr. Kaufman:

The Witness: I don't know whether this association which I belonged to out at Coney Island had Moe Rosenstein working for it. Our association did not have a rule all the time that butchers should not have any price signs in their windows. I didn't agree with that. Our association did not have that rule all the time. I don't know about our association employing Moe Rosenstein for the purpose of watching the various butcher shops and signs in the windows of their stores. I did not pay him any money for such services.

I began to buy poultry in New Jersey in November of 1927. I bought there for about six months. Within a few days after I started to buy there, I saw somebody following me. How long after I went to New Jersey the first time, I found that someone was following me, I couldn't tell you, because I lost the man all the time on the way. I was gone [fol. 770] a long time. Nobody got where I was killing my merchandise.

The first day that the corporation starts, they start to follow me. The corporation began the end of 1927, I think. The only time I found out I was followed was when I find them over there in February, 1928. I never saw them in New Jersey until I found them and they were locked up in February, 1928. There was Abe Newman and another man whom I don't know. I don't know what they were locked up for. They called me into the station house and into the courthouse and then they ask me if I wanted to bail those people, if I know them. I said I did not know them, except I know one of them. I said I had nothing to interfere with those people and they did not do any harm to me and I did not want to bail them. That is what I said there.

I said at the police station that they did not do anything to me. They never done me any harm. They went after me and I went away and I lost them; sometimes Moe Rosenstein; sometimes with Abe Newman; sometimes was Arkie. I do not know what they done. Every day I went to New Jersey, one of these men were following me, and I lost them every time.

They were talking to me right in my store; they came in and told me I should kill in Coney Island; that they would give me credit. Moe Rosenstein, Abe Newman and Mr. Joe Scull were the people. They particularly wanted me to do business with Morris Gerber. I said I would go to Morris Gerber if they gave me the conditions that I wanted. They met the conditions that I wanted when I finished killing in New Jersey; then I went to Morris Gerber, in March of 1928. Moe Rosenstein said to me to come in and he will bring me to Morris Gerber in the market, he will give me the condition, it will be fair for me to stay and deal with him.

Moe Rosenstein I saw once in Jersey and Abe Newman twice. I never saw Arkie Weissler in New Jersey; I saw him in Powell Street, Brownsville, and in Borough Park. [fol. 771] There are a few poultry markets in Powell Street. I know a butcher by the name of Schector in Brooklyn. He undersold me and the other butchers in Brooklyn. I made complaints about Schector underselling me to the market people in Coney Island who are some of the defendants in this case. I told them that I would come back to Coney Island to buy my poultry if the marketmen had Schector remove his signs from his windows and put a girl in his place to watch his prices. The market people want me to come back to Coney Island and kill stuff. I said Mr. Schector sold stuff at 35 that cost me 45 and I cannot compete with his prices. They were taking my business and giving it to Mr. Schector. I don't know what profits they put on. So I said if you want me to deal in the market I should have my five cents on a pound and Schector should not undersell me, so I may be able to exist in the business; so they gave me a proposition I should put the girl in to regulate prices and said they will charge me whatever they think necessary for them, but Schector never did agree with it.

I saw Arkie Weissler in Borough Park on that day he followed me to my store and stood two houses away from my store. Nothing happened to me. The next day I went to Powell Street in Brownsville to buy poultry and I saw Arkie Weissler there. He said I ought to go back to the Island. Nothing else happened. Those were the only two times that I saw Arkie Weissler. I don't know who was following me. They were following me every day, but it was a different machine. I don't know the names of the machines in the dark. I am sure that every day I lost the automobile that was following me, and I succeeded in losing them for more than six months. What I wanted was that the marketmen should not sell to the chicken dealers for any less than they sold to the butchers.

Mr. Kroppy: I make the same motion to strike out this testimony also on the ground that it tends to prove merely a local conspiracy among the marketmen in Coney Island. [fol. 772] It has no connection at all with any of the other defendants in the case.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 773] HARRIS MORNICK, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given at a former trial in October, 1929, was read in evidence, pursuant to stipulation, as in the case of other witnesses:

Direct examination:

The Witness: I have been in the butcher and poultry business for the last seven years in Coney Island. I bought my poultry during the summer and fall of 1927 in Scull's Market, owned by defendant Scull. For a while I used to buy from him and get along very nicely all the time. All of a sudden he says, "They are together and you have to stay with me." And I started to get a bad price of poultry—I was not getting the best poultry. I was not satisfied with the price for which he gave me. He gave me about four days poor poultry. On the fifth day, when I brought my

poultry back from the whole week, he says, "Listen, you have to take your poultry back, you will have to pay for it, and you would not get any other poultry anywhere else." I left the poultry there. The bill was $129, and I left the poultry there and went away from him. He made me pay him for the poultry, and I got poultry through another butcher by the name of Sussnofsky. I got poultry through him until I started to get poultry out of Coney Island, and then the trouble started.

At first I was trying to get poultry in Jersey City. I did get poultry there until they followed me over there one day and they took the shochet in their machine and I had to come back to Coney Island to get poultry. One of them was the defendant Murray Rosenstein. He came in and he got hold of Scull on the telephone and says "All right" to Scull; "Mr. Scull, we got them all and we will bring them back right away." He telephoned from the same market [fol. 774] in Jersey City he was bringing them right back.

He took the shochet in another machine and I had to take my machine and go back to Coney Island without any poultry. Then I went back to Mr. Harrison for poultry.

(Witness identifies Harrison.)

I was killing a long time there—all of a sudden I saw the prices is too high for me. So, one day in the summer of 1928 I went over and I asked Mr. Bass, a chicken marketman over in Brownsville, about the prices and said the prices was big that they were charging me over in Coney Island. I was being charged by Harrison at that time 50 cents for leghorn springs, and 58 cents for good springs. Bass charged me 34 for the leghorn springs and 42 for the other springs. When I saw the big difference I went and killed there, and I came back Thursday morning.

When I came home, Moe Rosenstein was there to my store and asked me, "What do you call that? You are starting to become a bad boy." I says, "I cannot help it, you cannot blame me, I got to make a living." He says, "Well, don't do that again." I wanted to go for more stuff from some other dealer, and I stood by my store and they was on the corner and I saw a car and they followed me along. So I went there and bought some fish which I did not need and turned back to go to my home. And I says, "What is the use to following me?" He says, "Well, I am getting paid, I am doing my duty."

The next day, instead of going out early in the morning, I went out at 12 o'clock at night. I was afraid to take out my car so I took a taxi and I rode over to Bass'. I was there the whole night sitting until the market was open. When the market opened and we started to kill, I see the same fellows there. Of course I killed my stuff and the taximan was there. He went out to the taximan and told him that [fol. 775] he is going to get a summons if he will get some chickens on his car. I says, "That will be my responsibility if you will get any summons." He went and put it on the car and he took me home and another man by the name of Mr. Krada—that is Mr. Krada right over there. When I came to my own store and took off a few bags of chickens, two cops were there and they told me I cannot take off the chickens. After that I kept on going with the stuff from the car and they could not do anything to me.

I bought some poultry from San Davis that time, in Jersey City, for about a month. I don't remember anybody telling me not to buy from Sam Davis. He sold me until he had none himself. When I went to Harrison, I was satisfied to get five cents off on a pound and I did. Until the last day I left there I got five cents a pound off. As to the people that followed me, I already have identified Moe Rosenstein. Another one was Herman Berman.

During this period between the summer of 1927 and the summer of 1928 there were two markets in Coney Island. Mr. Harrison was on 21st Street and Max Gerber and Klieger were the two on 8th Street.

(Witness identifies Gerber and Klieger.)

Cross-examination.

By Mr. Kaufman:

The Witness: I belong to an association of butchers in Coney Island, the Kosher Butchers' Protective Association, of which I was vice-president. Moe Rosenstein was not working for that association. There was a fellow by the name of Schwartz working for the association; we wanted him to associate the business. I attended the meetings of our association and saw Moe Rosenstein at a couple of these meetings. He wanted to associate us, but when we made some kind of an agreement, he had some kind that we should [fol. 776] get half a cent or a cent a pound for poultry and

all stuff, maybe he will be able to keep us associated. After the association was formed, Rosenstein did not come to the store.

This butchers' organization in Coney Island was to protect one another; in case somebody fails, we should help him along and all that stuff. We had our association so as to protect each other in connection with the buying. We always tried to get information as to where we could get good stuff at a lower price. He hired a man to go out and see where we could buy cheaper, send our truck and divide the poultry among ourselves. When I saw Rosenstein in Jersey he said, "You stop calling here, you have to go back to Coney Island to kill the stuff," and he took the shochet with him in his car, and I went with my car back to Coney Island. Six or eight months elapsed between our meeting Rosenstein in Jersey City and this meeting in Coney Island.

By Mr. Jacobson:

The Witness: I was still dealing with Harrison this summer, 1929. I dealt with Harrison prior to 1927 and 1928. I stopped dealing with him at the time I went to Jersey and to Bass in Brownsville, in the end of the summer, 1927. Bass did not get it from the market; he got it from Philadelphia and from other States. I do not know whether he was a retailer or wholesaler. When I come around and asked for poultry he told me the prices and I was very much satisfied, and I got my stuff there. After a long time, when I stopped killing at Bass', I came back to Coney Island. Then the association was broke.

I bought a couple of times by Kleiger; I had nothing against him. Wherever I went I was satisfied there, because the whole thing was broke up. I can get stuff all over then after that. I was with Harrison a long time; with Bass about a month. Then I went back again to Harrison for [fol. 777] two months or three months, I can't remember. After I went to Klieger; I did not go out far from Coney Island. I think it was last year.

Mr. Kroppy: I make the same motion to strike out this witness' testimony as I made with reference to the testimony of Bennie Sandler.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 778] HENRY B. WOLFSON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given at a former trial in October, 1929, was read in evidence, pursuant to stipulation, as in case of previous witnesses:

Direct examination:

The Witness: I am a chicken dealer, selling slaughtered poultry in Coney Island. At the beginning of the summer, 1927, and previously, I buy my poultry from Kings Poultry, owned by Mr. Horobwitz, Mr. Rosen and Mr. Kassoff. That is Mr. Kassoff standing up. I had a conversation with him on or about July 5th, 1927. Around July 5th I asked him to sell me poultry and he said he can't do it and I asked him the reason why—"Do I owe you any money?" —and he said, "No, but we have an association amongst ourselves and you are assigned to Coney Island and I cannot sell you any poultry." I had to go back to Coney Island for my poultry and it was late that morning and poultry is bought so that you get it in your business at 8 o'clock, from eight to twelve. After lunch, there is hardly any business in our line.

I came back to Morris Gerber, Inc., and Gerber told me they are in an association and I will have to stay there to buy my poultry off him. In Coney Island there were six markets at that time, Morris Gerber, Abe Harrison, Mr. Joseph Scull, Mr. Rubinstein, Mr. Livoti, and I was assigned to any one of those places which I wanted because I was a chicken dealer. I came to Morris Gerber because I dealt with the man four years previous. He told me I am assigned to Coney Island. I also have the privilege to kill at any one of them. He told me there is an association and he advised me to stay with him and deal with him. I dealt [fol. 779] with him for a few months and it was quite satisfactory. I used first grade poultry only. I don't use any kind of bargain poultry. Sometimes the market has good poultry, sometimes it hasn't got it.

I came to him one day and he did not have the class of poultry I cared for. I didn't care to go anywhere else but I tried and got my poultry outside from J. Goldman in Greenpoint. I got my poultry for several days and one morning when I came there I saw three men getting out of

a machine. I didn't see them following me, but they came in and said that I can't have my poultry, I must go back to Coney Island where I belong. It was about 4 o'clock in the morning. I never saw these men in my life before and never seen them after. They followed me. Mr. Goldman refused to give me the poultry; I had to go back to Coney Island. I got a little Ford car. I start turning around to dodge them, maybe I can run away from them, and I kept on riding around. I couldn't get away from them. They brought me back to Morris Gerber, Inc. I went in there and they told me, "They brought you back with music, didn't they?" All of them, the marketmen and everybody, were laughing in Mr. Gerber's market. The only one with me was my wife. When Gerber said that to me, Mr. Gerber, Mr. Kleiger and plenty of butchers and chicken dealers were there. He said, "What's the good of running outside? They will bring you back here, no matter where you go."

I stayed for a couple of days or a week or so again. I didn't go out for any cause or reason or anything that didn't suit me; I just wanted to be a free man in the trade and I started going around again. They brought me back again. It continued that way the whole summer and then for the winter I went to Jamaica to Mr. Goldman. I can't [fol. 780] remember the market in Jamaica; it is on a little side street there. I did get my poultry there once. I was followed on that occasion and brought back. I do not know who followed me. I tried Mr. Bass. There I got my poultry for several weeks. They followed me there. If I slowed up, he would slow up; if I drove fast, he would drive fast. Every time I was followed and brought back.

I dealt with Bass quite some time and then I came to Mr. Gerber. At that time Mr. Joseph Scull was there. It was in the fall of 1927 when Joseph Scull joined Morris Gerber's company. Joseph Scull would not let us go near the coops to pick my poultry. He said to me that they brought me back to him. He said to me, "In this place you are going to die. In this place you must buy. You cannot buy any place else, and if you go outside we will bring you back every time. Here in this place you are going to stay, whether you like or don't like it." I did select the poultry but I had no choice of killing it. Joe Scull went over to the coops and killed it himself. I didn't have a chance to

kill my poultry. Dirt, sawdust, and everything in it. When I brought my poultry into my business I was ten pounds under weight. At that time they charged me five and seven, five on fowl and seven on spring chickens, which was agreeable to me. It is even agreeable to me today if it is good stuff.

Then I went to some places on Long Island to pick up a little poultry. Sometimes I bought poultry; sometimes they brought me back. If I would go into a certain market to kill my poultry, a man would go out from a certain machine which I never saw coming, and say, "You cannot give this man any poultry, he belongs to that certain place in Coney Island, or Harrison's, those two places were [fol. 781] selected by him." When I came back, they would sell me poultry which was appreciable, and then they would start in again the same thing. It was impossible to sell that class of merchandise again. It kept on continuing for about fourteen months. Gerber continued to charge me five and seven cents above about ten months.

All of a sudden in the summer of 1928, around July—on one occasion that I was not satisfied with Mr. Gerber's poultry, I went to Mr. Harrison's market—that was the privilege I had, and killed the poultry for the same price and when the bill came to me I saw there was an increase of two cents in the spring chickens. I came over to Abe Harrison and asked him, "Why didn't you notify me that you have been raising me? If you notify me that you are raising me, I would take from the consumer the two cents." He said to me, "You won't be able to take the two cents off, you cannot take the two cents off from the bill, and you got to pay the full bill." I straightened with him and paid him his bill and stopped dealing with him again. I went to Morris Gerber, Inc., again, and when I came to Mr. Scull, I was fixed in the safe way; I had to go out to get my poultry once more.

On one occasion I started out at 1 o'clock in the morning and traveled until I could locate any place where I could buy a pound of poultry. If I would buy it, O. K., and if I did not buy it, I would come back to Morris Gerber. These people that followed me did not speak to me on any occasion. I remember on one occasion going to buy from Goldman. The poultry was killed in a garage. It was on a Friday morning. I started at about half-past three because

I didn't sleep in the house at that time. I started from a yard because my house was watched. I saw people in front of my house on that occasion.

[fol. 782] Mr. Kaufman: This is purely prejudicial, this mysterious somebody who is lurking around the corner. If he wants to come to the conclusion that they were watching him, I think it is unfortunate for these defendants and tends only to prejudice them.

The Court: Over-ruled.

Mr. Kaufman: Exception.

Q. Tell us exactly what you saw happen on that day.

A. On that day, that is on Wednesday, the day before—before I started out, I had two men watching me on the other side of the street from me.

Q. You mean two men were sitting in a machine?

A. I mean I would turn my machine to deliver an order and right after me——

Mr. Kaufman: I move to strike out the statement of the witness that he saw two men watching him.

The Court: The same two men when you went to deliver an order?

The Witness: Yes.

The Court: Denied.

Mr. Kaufman: Exception.

The Witness: I didn't go home. Somehow or other I managed to escape with the machine. It was after 5 o'clock and I took the machine away, not to my garage but to Sheepshead Bay. After we close our business, I went with the wife and we had in a restaurant something to eat and I looked around to see if anybody was following me. Nobody was following me and I went to Sheepshead Bay to get my car back again. It was about 10 o'clock at night. I got in the machine. It was raining terrible. This was at night, and we stayed there until 1 o'clock. At 1 o'clock we started out again. I had to go to Avenue M and Ocean Avenue to pick up Mr. Rosman, who was at that time Mr. Goldman's shochet. At that time, I think it must have [fol. 783] been around 2 o'clock. I took him to Greenpoint and met Mr. Goldman's son. He said to me, "Wolfson, I cannot kill in the market, we are going to kill in a garage." He took me in the garage down there and they kill the poultry there, and I came home with it.

I did not see any of these people that I describe as having seen the day before on that occasion. I seen them many and many a time. They were not always the same people. The machine was every time different. I had a talk with Scull about coming up to your office in 1928, before the Holy Day; this is after September 1, 1928.

The Court: It will be received only as against Scull.

The Witness: He said to me, "I don't need no summons to you." I said, "You claim I owe you money. I am willing to pay you and am willing to go to court with you." He said, "I don't need no summons. We will fix you without a summons." I said, "I heard the Federal Government took action in that case." He said, "We bought the Federal Government, too, we ain't afraid of the Federal Government either." I said, "Maybe you bought the White House, too," and that was the finish of it. When the night came, the marshal came and took my merchandise out.

Cross-examination.

By Mr. Jacobson:

The Witness: In July, 1928, I had some difficulty with Mr. Harrison about two cents a pound; that is the first trouble I had with him. I had no trouble with Mr. Gerber up to the time Mr. Scull came there. Even before Mr. Scull came there in the fall of 1927, I was trying to buy outside. After Scull came there and between the fall of 1927 and July, 1928, I continued to deal there. During that period I also dealt with Harrison and had no trouble with him.

A marshal came into my place on a Saturday before Yom [fol. 784] Kippur, 1928. Gerber, Inc., I owed a thousand dollars. I expected Mr. Gerber to sue me because I wanted to come before a court and jury. Instead of that, they sold my account to Mr. Rochberg in the Bronx; didn't serve me with no papers and got judgment. I was willing to go to court with him and pay him. That is the only judgment I had in my life against me. I took a lawyer and they reopened the case. At that time that I settled that case, I knew that there had been an investigation in the Federal

Department; I knew it some months ahead. At that time I didn't say to Mr. Scull that I would get even with him.

I had some trouble with Harrison in July, 1928. At that time I owed Harrison just a bill that I wanted to pay him. Harrison did not say that he cannot sell me any poultry until I paid the bill I owed. I know where the Boulevard Restaurant is in Coney Island. I go in to eat there all the time. I did not, in the past six months, at that restaurant, say in the presence of a number of people that I was going to get even with every Coney Island marketman and particularly Joe Scull, even if I had to perjure myself, and I did not say that the reason I was going to do that was because Gerber had the marshal take poultry out of my place on a Saturday. I didn't say to Moe Beck or Morris Resnik or any butchers within the past six months that they should not pay their bills to the marketmen in Coney Island because they could get away with it through coming here and testifying. Harrison never refused me to sell poultry.

Mr. Kroppy: I make the same motion with reference to this testimony.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 785] Joseph Kowalsky, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

(The following testimony, given at a former trial in October, 1929, was read in evidence by stipulation, as in the case of previous witnesses:)

Direct examination:

The Witness: I have been in the live poultry business about eighteen years, in Brooklyn. I get my poultry many times in West Washington Market and also at the terminals of the New York Central, Erie and Lackawanna Railroads. I get it on my own truck. I have always been able to get poultry at the railroads or West Washington Market. I am not a member of the Chamber of Commerce and was never asked to join it. I had a conversation with Louis Spatz during the summer of 1927 with regard to the Chamber of Commerce. I think Max Sokoloff was present and some others. We were talking about joining the retailers'

association and the Chamber of Commerce. I said I would like to join the retailers' association before the Chamber of Commerce, and I joined it. Spatz told me to join the retailers or the Chamber of Commerce. I said that if I join any, I am going to join the retailers' association and that I have no benefit of either one of them. He said there will be a benefit of it for me, that it would be easier to get poultry and be treated a little better. He said, "We will be together in associations, we won't be mistreated by the commissioners." That's all he said. I told him I am not doing a wholesale business, but a small retail business and that to belong to the Chamber of Commerce you must be a wholesaler. Quite a few months later, I did join the retailers' association.

About November, 1927, six or eight months after this conversation with Spatz, I went to the market to buy poultry and I didn't get any on account of I was asked to take [fol. 786] a union man in my place by one of the delegates, Max Kessler. I was doing a strictly retail business at that time and had not been employing any union men. I had quite a few conversations with him about the same question after that, every week, and he said I have to hire a union man. After I got together with a few men in the market, I spoke to them and I got poultry. One of them I think is Max Sokoloff, and Jake Mintz, Louis Spatz, Max Rosen, and perhaps Hirshon, and quite a few others which I don't remember. I told the gentlemen I couldn't afford to keep any union man and that they should help me out, whether I can get poultry without hiring a union man; then they see that I got poultry. I was unable to get poultry just from Friday to Monday.

When I went down to the market on Friday, I bought three coops of chickens from a party named Applegate, and I had one on the truck already, and the other two were supposed to come on, and they never went on. They took the other one off, too. After that I left that party and I went around to the rest of the marketmen, and asked them for poultry and everyone refused to give me. After my talk with Kessler, that was the first time I was able to load poultry.

About this time I also spoke to Tootsie Herbert. I went over there and he says I better hire a union man, otherwise it would be hard for me to get poultry. I did not hire a

union man and I got poultry; that was after I had talked to these marketmen.

Cross-examination.

By Mr. Sager:

The Witness: The Retailers' Protective Association, Greater New York and Vicinity, which I joined, was organized in November, 1928. All the various things that I have testified to here, occurred before that. I have always been [fol. 787] a retailer. I never did join the Chamber of Commerce. I am not eligible, as they don't take in retailers.

By Mr. Kaufman:

The Witness: Max Kessler asked me to only have a union man on Saturdays. He told me there were a lot of union men out of work and they should be given a chance. Those were the words he used to me. I told him I could not afford to keep a union man, I was not so very busy on Saturday and that my brother and myself and my wife could take care of the business for ourselves. They didn't do anything to me when I refused to take a man; they were very nice and didn't bother me at all, except that Mr. Kessler asked me to put on a union man on Saturdays. I was stopped on a Friday, the day that Max Kessler asked me to take on a union man from about nine to about two in the afternoon. Aside from that, I got all the poultry I wanted. When Mr. Kessler wanted me to have a union man on Saturday, he told me there is a lot of union men out of work and that I should have one union man on; that was the reason he stopped me.

Mr. Kroppy: Same motion.
The Court: Same ruling.
Mr. Kroppy: Exception.

[fol. 788] The following testimony was given by the witness on this trial:

Cross-examination.

By Mr. Kaufman:

The Witness: I am still in the poultry business. Since December 1928 I have not had any difficulty in connection

with the purchasing of Poultry. I have not heard of anyone having any difficulty of any kind. I am active in the business. I have two placed in Brooklyn. I am a marketman and a retailer.

[fol. 789] ISRAEL M. LERNER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am one of the Deputy Assistant Attorney Generals of the State of New York and have been for approximately 15 or 16 years.

Q. 4. In that capacity have you ever conducted investigations of combinations among the poultry marketmen of Greater New York?

Mr. Kaufman: I object to that on the ground that it is incompetent and immaterial.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: I have.

Q. 5. When did you investigate?

A. It was either in 1925 or 1926. I can better tell by looking at the records.

Q. 6. What were the names of the organizations that you investigated?

Mr. Kaufman: I object to that on the ground that it is incompetent and immaterial.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: One was a corporation then known as the Community Live Poultry Corporation and another the Square Deal Live Poultry Corporation and, if my memory serves me right, I think there was a third by the name of The Square Deal Corporation, and also the Commission Merchants at West Washington Market.

Q. 7. At what time did you investigate the Community Live Poultry Corporation?

Mr. Kaufman: I object to this on the ground that it is [fol. 790] incompetent and not binding on any of the defendants, and on the further ground it will not show that any of the defendants are in any wise connected with the corporations or names given by the witness.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: I believe it was some time in the year 1925 or 1926.

Q. 8. Who were the members of the Live Poultry Corporation, the Community Live Poultry Corporation, what class of people?

Mr. Kaufman: I object to that on the ground that it is incompetent and immaterial.

The Court: Overruled.

Mr. Kaufman: And on the further ground it is clearly hearsay.

The Court: Overruled.

Mr. Kaufman: Exception.

The Court: It is first-hand knowledge.

The Witness: I know of my own knowledge that the persons who were interested in the Community Live Poultry Corporation were owners of slaughterhouses.

Q. 9. In what section of the city?

Mr. Kaufman: I move to strike it out on the ground it is incompetent.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: I believe they operated in the territory known as Williamsburg in the Borough of Brooklyn, City of New York.

Q. 10. Could you estimate the percentage of markets in Williamsburg who were members of the Community Live Poultry Corporation?

Mr. Kaufman: I object to that on the ground it is incompetent.

The Court: Overruled.

Mr. Kaufman: Exception.

[fol. 791] Mr. Kroppy: I object on the further ground that estimates are not admissible here, we want the facts.

The Court: Overruled.
Mr. Kroppy: Exception.
The Court: The man conducted this investigation.

The Witness: I should say about 95 to 98 per cent.
Q. 11. Upon your investigation of the Community Live Poultry Corporation what practices did you find in progress among the marketmen of Williamsburg?

Mr. Kaufman: I object to that on the ground it is incompetent.
The Court: Sustained. Tell us what he investigated. I don't care what he found out, just tell us the facts. You investigated, that is all.

The Witness: I investigated their methods of doing business with respect to fixing prices of live poultry and slaughtered poultry sold by so-called commission merchants and slaughter houses, who, in turn, sold it either directly to the purchasing public or retail butcher stores. I investigated complaints that some of the slaughter house people who finally found themselves as members of the Community Live Poultry Corporation, that they were intimidated——

Mr. Kaufman: I object to that.
The Court: On what ground?
Mr. Kaufman: On the ground that it is incompetent and a conclusion of the witness.
[fol. 792] The Court: Overruled.
Mr. Kaufman: Exception.

The Witness: —and forced to give up their individual places of business conducted by them as a slaughterhouse, turn their places of business over to the Community Poultry Corporation, become one of its managers and known as a branch number under threat of not being able to get any poultry from the producers or the commission merchants at West Washington Market.
Q. 21. Were there any other practices that you investigated in connection with the Community Live Poultry Corporation?
A. I investigated a complaint that the organizers of the Community Live Poultry Corporation had made an arrangement with the commission merchants at West Washington Market whereby it was understood that no poultry should be sold to any marketmen or rather any slaughter-

house man in the vicinity unless he were a member of the Community Live Poultry Corporation, and I investigated several complaints whose names are in the minutes, and I have the minutes here of those.

Mr. Kaufman: I object to what they testified to.

The Court: Just what you investigated.

Mr. Kaufman: I move to strike out the answer of the witness on the ground that it is not responsive. The purpose of the inquiry is as to the nature of the investigation made by Mr. Lerner as to the practices. The witness has not referred to any practices that he investigated but he is referring to specific complain-s that he investigated and it is not responsive.

The Court: Overruled.

Mr. Kaufman: Exception.

Mr. Kroppy: I desire to object to the testimony of this man on the ground that he is testifying to complaints based on practices in 1926 which preceded the date of this alleged conspiracy, which the complaint says commenced in 1927. [fol. 793] The Court: The testimony is admissible upon whatever bearing it may have in event of a finding favorable to the Government upon the charge in the complaint as to whether or not the remedy of injunction should be granted, and, if so, its extent. Proceed.

Mr. Kroppy: Exception.

The Witness (continuing): I had a talk with the members of the Community Live Poultry Corporation and with the commission merchants and inquired from the commission merchants why they had refused to sell poultry to some of the slaughterhouse keepers.

Mr. Kaufman: I object to the conversation and move that the answer be stricken out.

The Court: No, I will let it stand, so far as the general subject-matter of the talk is concerned, but not what the results were. I just want a picture of the kind of investigation you conducted.

Mr. Kaufman: Exception.

The Witness (continuing): After I went into this investigation quite thoroughly, after several meetings, I commenced an action——

Mr. Kaufman: I object to that and move to strike it out.
The Court: Overruled.
Mr. Kaufman: Exception.

The Witness: I have the records here.

By the Court:

Q. 22. You commenced an action about when, Mr. Attorney General?

A. I commenced an action in the Supreme Court of Kings County to dissolve the corporation known as the Community Live Poultry Corporation.

Mr. Kaufman: I object to that and move to strike it out.
[fol. 794] The Court: Overruled.
Mr. Kaufman: Exception.

The Witness (continuing): —on the ground that it was a price fixing combination and in violation of the Donnelly Act, and the action came on for trial before Mr. Justice Callahan and a jury on certain questions.

Mr. Kaufman: I object to it. The witness now is going beyond the scope of the examination. He is now down to the issues of the case.
The Court: The general nature of it I will permit him to say. I do not even care what the result was, unless it is the general result.
Mr. Kaufman: Exception.

The Witness (continuing): The result was a verdict dissolving the corporation on the ground that the corporation was a corporation in restraint of trade and on the ground that it was a price fixing combination——

Mr. Kaufman: I object to the answer that it was found to be a price fixing combination, and the statement of the witness that there was a verdict or judgment on that complaint, and on the ground that it was found, as the witness testified that the purpose of the corporation was to fix prices as a conclusion of the witness.
The Court: Denied.
Mr. Kaufman: Exception.
The Court: I will permit you to examine his records if you wish, on this collateral matter. The Best Evidence rule does not prevail except to avoid error, and you may

look at the record. He has certified copies of the record and you may examine them.

Mr. Kaufman: I further object to the answer on the ground that it does not appear that the defendants in the action as against the Community Live Poultry Company or any persons against whom the investigation was conducted by the Attorney General are parties defendant in this proceeding.

The Court: Denied.

[fol. 795] Mr. Kaufman: Exception.

Mr. Kroppy: I object further on the ground that all of the testimony given by the witness shows no activities on the part of the defendants who were parties to the action in Kings County Supreme Court; the activities of those parties were limited entirely to intrastate transactions and intrastate interferences which had no effect at all on interstate commerce and on the further ground that it does not tend to connect any of the intrastate interferences with the conspiracy or any of the activities of the parties named in the amended petition in this case.

The Court: Denied, proceed.

Mr. Kroppy: Exception.

Mr. Rice: May I have the judgment roll marked in evidence?

(Marked Plaintiff's Exhibit 46 for identification.)

Q. 23. Mr. Lerner, I hand you Exhibit 46 for identification and ask you whether you have ever seen that before?

A. I have.

Q. 24. Will you tell us what it is?

A. It is a petition and order for relief to commence the action to dissolve the Community Live Poultry Corporation.

Mr. Kaufman: I object to that.

The Court: Overruled.

Mr. Kaufman: Exception.

Q. 24a. What is the first document in Exhibit 46 for identification?

A. The first document is an order pursuant to Section 130 and 131 of the General Corporation Law permitting the beginning of an action against the Community Live

Poultry Corporation to procure a judgment vacating the charter and annulling the existence of such corporation on the ground that it violated the laws of the state, whereby it has forfeited its charter and whereby it has become liable by reason of abuse of its charter.

[fol. 796] Mr. Kaufman: I object on the ground that it is incompetent. The witness is attempting to read into the record something from a document not in evidence.

The Court: Overruled.

Mr. Kroppy: I object on the ground that it has reference to a violation of the law which has no connection at all with restraint of interstate commerce.

The Court: Overruled.

Mr. Kroppy: Exception.

The Court: I previously stated the evidence is relevant and competent here as having a bearing as to whether or not the remedy of injunction is appropriate and should be awarded in this case in the event the evidence should establish that there is a conspiracy of the character involved in the bill of complaint in the case on trial. It matters not in that regard whether the individuals or companies on trial were or were not involved in the suit brought in 1925 or 1926.

Mr. Kaufman: I except to your Honor's ruling.

Mr. Kroppy: Does your Honor rule also that it makes no difference whether the acts about which the witness testified to preceded or followed the alleged conspiracy in regard to interstate commerce violations?

The Court: Absolutely yes. In other words, if the State Government has gone along for years here and made efforts to correct the evils and the action taken by the State and the judgments entered by the state have been ineffective, it does not matter whether there are the same individuals involved; they are the same practices involved in their general nature, in the same community. I say if those efforts have gone along for some years and then it be established in the case on trial that similar practices having similar general effects, engaged in by the same general types of people, whether the same individuals or not, then that fact, that former efforts have failed, have a bearing upon the character of remedy that would be available and appropriate in the case on trial and the evidence is ad-

mitted on that theory. I say that by way of explanation to counsel.

Mr. Kaufman: In view of your Honor's statement, it is incumbent upon Government, in order to sustain this testimony, to connect it with proof that the efforts of the state were ineffective. If your Honor's statement is followed to a logical conclusion, your Honor indicates that this type [fol. 797] of evidence is admissible for the purpose of showing evils and that the efforts of the state to correct those evils were ineffective and therefore this Court may step in and do that which the state has been unable to do. Assuming that this Court has the power to do that, where there has been no infraction of interstate commerce, nevertheless it seems to me that on your Honor's statement that the Government, in order to sustain this evidence as being competent or admissible on any theory, must show that the efforts of the state were ineffective in so far as at least intrastate commerce was concerned.

The Court: Very well. I have already made these statements that you might know the theory upon which the proof is now being admitted and the limitations that are attached to the proof. The only scope that will be given to the proof.

Now, I will hear you on the merits of it at a later stage. Your objections are overruled and the testimony will be admitted. Proceed.

Mr. Kroppy: Exception.

Mr. Kaufman: And I assume without interruption that we have a general exception to this testimony.

The Court: Yes; in other words I will hear testimony of this witness as to the efforts that were made by this witness. It doesn't make any difference whether it was intrastate or interstate.

By Mr. Rice:

The Witness:

Q. 25. Mr. Lerner, will you tell us what the second document of Exhibit 46 for Identification is?

A. It is the certificate of incorporation of the Community Live Poultry, according to Article 2 of the Stock Corporation Law and, amongst other things, gives the names and addresses of the incorporators who serve until the first annual

meeting. The third document is the petition and affidavit for the appointment of a receiver to examine the persons mentioned in the petition pursuant to the Business Corporation Law known as the Donnelly Act, as applied to the facts stated. [fol. 798] Exhibit 47 for Identification appears to be a certified copy of the judgment roll in the same action in the Supreme Court of Kings County, dissolving the Community Live Poultry Corporation. The Judgment as before me, indicates the three questions which were certified by the jury on which the judgment was rendered.

Mr. Rice: I offer Exhibit 46 in evidence.

Mr. Kaufman: I object to it on the ground that it is incompetent and immaterial to this action, but I make no objection on the ground that it is not certified.

The Court: Over-ruled.

Mr. Kaufman: Exception.

Mr. Rice: Exhibit 47 is offered in evidence.

Mr. Kaufman: I object to that on the ground that it is incompetent and immaterial and when I say incompetent I do not include the fact that it is not a certified copy.

The Court: Over-ruled; you may have your exception.

The Witness: I investigated other companies in 1925 or 1926, the Square Deal Live Poultry Corporation operating in Brownsville, Brooklyn, formed by about 88 or 89% of the slaughterhouse marketmen in Brownsville.

Mr. Kaufman: I object to that on the ground it is immaterial.

The Court: Same ruling.

Mr. Kaufman: Exception.

The Witness: I took the same course to investigate in the Square Deal Poultry Corporation as I did with respect to the Community Live Poultry Corporation and at about the same time. I began my investigations the latter part of 1925 and concluded in 1926 and the other investigations went on at or about the same time.

By Mr. Rice:

The Witness:

Q. 51. Mr. Lerner, did you at any time investigate the [fol. 799] commission men in West Washington Market?

A. I did.

Mr. Kaufman: I object to that on the ground it is immaterial; the commission men are not involved in this case.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: About the same time I investigated the methods by which the commission men fixed their prices to the slaughterhouse keepers I investigated the methods of bringing poultry into New York and I found the practice to be that some of the commission merchants had guaranteed to the shippers a fixed price for poultry and that they did not sell below that price, whether there was an abundance of poultry or no. The commission merchants had gone into the practice of charging two or three cents more for premium live poultry stock. It was no better or worse than the average stock and that in the morning before the market would open in West Washington Market, or the sales would be open, there would be a blackboard upon which there would be written the price of the different kinds of poultry and they were the prices that were charged by all commission merchants and that was the price that the slaughterhouse people had to pay.

There were no bargains, no bargaining whatever as to the price. There was one price down at West Washington Market, depending on the will of the commission merchant.

Mr. Kaufman: I move to strike out all these conclusions of this witness. That is all conclusions of the witness rather than the object of the inquiry.

The Court: There is a serious question of that. I will admit all evidence of what the process is but I don't care what he finds out.

Mr. Kaufman: If your Honor please, has your Honor ruled on my motion?

The Court: No, I will listen to further questioning.

[fol. 800] Mr. Kaufman: Exception.

By Mr. Rice:

The Witness:

Q. 57. What were the questions you investigated or the practices you investigated?

A. I investigated the practice of fixing a price for every day, for sale of live poultry at West Washington Market——

Mr. Kaufman: I object to that and move to strike it out.

The Court: Denied, because the witness indicates that there was a fixing of price.

Mr. Kaufman: I think what the witness means is that he investigated as to whether or not there was a fixing of price amongst the commission men.

The Court: Did you investigate the question of whether or not there was a practice?

The Witness: I did.

The Court: That is all I want to know. I am taking that in in that sense.

The Witness: And I asked Mr. Brown, who was a commission man, Mr. Fleck, and several others, I think they are all commission merchants on West Washington Market who were charging one price.

Mr. Kaufman: I object to what he asked him and move to strike it out.

The Court: You made those inquiries?

The Witness: I did it because of my investigation.

The Court: I am only going to consider it as to the scope of his investigation, I am not going to consider it against you other than that.

By Mr. Rice:

The Witness:

Q. 60. Will you describe the general nature of the inquiry among the commission men?

By the Court:

[fol. 801] The Witness:

Q. 61. The nature and field of your inquiry, the causes of the people and the causes of questions?

A. I inquired of the commission men where they get their poultry from, how the prices were fixed every day, how the bulletins got a price long before the merchants or the slaughterhouse keepers did get the price and why it was that all commission men charged the same price the same day.

By Mr. Rice:

The Witness:

Q. 62. Had you received complaints against the commission men prior to your investigation?
A. I did.

Mr. Perlman: I object to that.
The Court: Overruled.
Mr. Perlman: Exception.

By Mr. Rice:

The Witness:

Q. 63. What complaints had you received?

The Court: Just their general nature; that is all.
Mr. Perlman: I object to the question.
The Court: Overruled.
Mr. Perlman: Exception.

The Witness: Well, all commission merchants were charging the same price and very frequently premiums were fixed on poultry which were no better than the other and if they did not want to pay the premiums, you couldn't get the poultry, particularly when there was a shortage.

Mr. Perlman: I move to strike out the answer upon the ground that it is incompetent and not binding upon the defendants.
The Court: Denied.
Mr. Perlman: Exception.

The Witness: I have investigated the New York Poultry [fol. 802] Exchange. I believe it was either 1926 or 1927; I don't know which.

Generally the people who were members of the New York Poultry Exchange were the same slaughterhouse people that operated the Community, the Square Deal and the few others. That Exchange took in all of the marketmen in the greater city of New York, whereas the Square Deal Live Poultry Corporation and the Community Live Poultry Corporation took in only certain sections of Kings County. I think the commission merchants were interested in that Exchange, too. Attorney General Ottinger and myself were instrumental in suggesting the Poultry Exchange

as a means of eradicating the evils which existed in that industry and perhaps try and fix or have fixed a fair price, based upon competition for poultry, and that didn't seem to work out, they couldn't get along.

By Mr. Rice:

The Witness:

Q. 74. What evils did you investigate there; what practices did you investigate?

Mr. Kaufman: I object to that.
The Court: Overruled.
Mr. Kaufman: Exception.

The Witness: I investigated the practice of fixing prices for all poultry without competition.

Mr. Kroppy: I move to strike it out, if your Honor please, on the ground that the matter of fixing prices by the Exchange is not involved in this case at all and therefore it is distinctly unrelated to the questions in this action.
The Court: Denied.
Mr. Kroppy: Exception.

Q. 75. What were the practices?
[fol. 803] A. The practices of creating a superficial shortage of poultry in order to boost prices and increase premiums on poultry.

Mr. Kroppy: Same objection.
The Court: Same ruling.
Mr. Kroppy: Exception.

Q. 76. In your investigation of the Square Deal Poultry Corporation, did you investigate allocation of customers?
A. I investigated that, not only for the Square Deal but in the Community Live Poultry Corporation, as well. I investigated David Hirshon several times in connection with price-fixing combinations in the poultry industry.

Mr. Kroppy: I object to all that testimony, if your Honor please, on all the grounds previously stated.

Q. 86. Was Hirshon called before you?
A. I personally examined him many times.

The Court: Overruled.
Mr. Kroppy: Exception.

The Witness: I investigated Jacob Mintz in the same connection as Hirshon. Also Sam Lax and Morris Gordon in the same connection as Mr. Hirshon. I also investigated Morris Hillman, William Simon and Samuel Sohn but not Arthur Herbert. I have no recollection of Sam Goldstein, Louis Weidberg, Max Gold, Sam Gold, Abe Harrison, Abe Franzel, Meyer Oster, Barney Azwolinsky, Charles Mirotznik, Louis Sorkin, Isaac Lipschitz, or Sam Isaacson. In the case of those persons that I have named I personally examined them in reference to the matters about which I have previously testified.

I investigated the Greater New York Poultry Exchange both before and after the time of the dissolution of the Square Deal Poultry Corporation and the Community Live [fol. 804] Poultry Corporation.

Cross-examination.

By Mr. Kaufman:

The Witness: I made an investigation of the commission men. I went sufficiently into the investigation to give me enough information to proceed. I indicted one of them for conspiracy, together with eight other poultry dealers in Brooklyn. The indictment was taken out of the hands of the Attorney General and then handled by the District Attorney of Kings County and as far as I know, they made no further move, and then an application was made to dismiss the indictments and the motion was granted.

Thereafter I made an investigation of the Poultry Exchange in a superficial way; it was not complete.

After this examination I did nothing about it. The investigation was taken out of my hands completely. The Attorney General was working with me in that investigation. So far as I know, no action was started as a result of my investigation. We did not commence any civil action against the commission men. The only thing I did, was to procure an indictment against one of the commission men and eight of the poultry dealers which has since been dismissed.

I have no recollection that I made any investigation of Arthur Herbert. I cannot recall his name. I do not recall

the name of Charles Herbert either. I never made an investigation in connection with Local 167 of the Brotherhood of Teamsters & Helpers as applied to the poultry trade. I would have made an investigation if I had received any complaints with respect to that union depending entirely how far and how much it was connected with the industry. I heard enough about the Shochetim Union but I did not make any investigation.

Further cross-examination.

By Mr. Kroppy:

[fol. 805] The Witness: These actions about which I testified were against the corporations themselves, that is, the Community Live Poultry Corporation and the Square Deal Live Poultry Company. The judgments entered in those actions only provide for the dissolution of the corporations and the winding-up of their affairs.

Q. There was no decree or judgment rendered against any of the individual stockholders of the corporation, was there, in any of these suits?

A. No, but that decree was based upon what the individual stockholders with respect to the corporations did, which brought about this decree.

Mr. Kroppy: Your Honor, I object to that and move to strike out the answer as not responsive to the question.

The Court: Denied.

Mr. Kroppy: Exception.

Q. Will you please answer this question, Mr. Lerner: There was no judgment or any decree entered against any of the individuals who were stockholders in either of these two corporations or who were officers or directors of them?

A. To my best recollection, there was not.

Q. As far as you know, there haven't been any entered against those individuals since that time in any proceeding brought by the state?

A. So far as I know, I will say no.

Q. So that today, there is no judgment or decree entered in the Supreme Court of the State of New York against any of the individuals and the stockholders or officers or directors of either of these two corporations or any other

corporation engaged in the live poultry industry in New York?

A. There may be, but I do not know of any.

Q. If any proceeding was started by the Attorney General's office, you would know of it, would you not?

[fol. 806] A. I would not, because the investigation was taken over by one of the deputies named Mr. Groat, and what he did, I do not know.

By the Court:

Witness:

Q. You rather confine yourself, Mr. Attorney General, to testifying to matters concerning which you had personal charge?

A. Yes.

Q. Although in some the Attorney General himself, Mr. Ottinger, took part?

A. Whenever he was active in this respect, I was with him. He never went alone.

Mr. Kroppy: I move to strike out the witness' testimony on the ground that it relates to actions and proceedings against corporation for their dissolution without any showing that any of the individuals were guilty of any practices or dealings in restraint of interstate trade involved in this case.

The Court: Denied.

Mr. Kroppy: Exception.

Further cross-examination.

By Mr. Perlman:

The Witness: I have no recollection of ever talking to Joseph Rosenman or examining him or hearing his name.

These complaints that came to me during the time that I was investigating the poultry industry came only from slaughterhouses. Their complaint was against the Community Live Poultry Corporation, who compelled these fellows to join them on the threat of being driven out of business. There were a group of the slaughterhouse men that organized the Community Live Poultry Corporation, and others that did not want to go in. The Community had all the slaughterhouse men in a section in its organization

but some were involuntary members. These men refused to go on with any programme that the Community wanted. You came to our office and asked to dissolve this organiza-
[fol. 807] tion. It was not then a question of the Shochetim Union or any other labor union or loaders or teamsters. I think there were some complaints that the commissionmen were compelling some of the slaughterhouse people to take trafe, that means not kosher poultry that were injured and not fit for consumption by Jews, and they were compelled to take everything and anything under the threat of not being able to get any.

My investigation really covered a case of some slaughterhouse men refusing to voluntarily go along with the Community programme. The evidence you presented was well merited, and we brought our action. That was the investigation I was conducting of the poultry trade so far as the Community was concerned. Since that time I have no recollection of calling to my office any shochet or of examining into the organization of the Shochetim Union. Occasionally a shochet would come in and complain that they were fixing prices and demanding unreasonable requests.

[fol. 808] HARRY RUBAY, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a butcher in Bensonhurst near Borough Park and Coney Island. I have been buying this year from the Majestic Live Poultry Market operated by Harry Seewald.

I had a conversation with Mr. Seewald about the 20th or 21st of September, 1931 in his market when I was there to buy poultry.

Q. 20. What did Mr. Seewald say to you?

Mr. Kaufman: I object to that on the ground it is incompetent and immaterial and not binding on any of the defendants.

The Court: Overruled.

Mr. Kaufman: Exception.

The Court: It has a distinct bearing on the form of the decree irrespective of whether or not it is established in this case that the particular defendants in the case are still engaged in the conspiracy.

The Witness: I bought the poultry and he put up a price. He never put me no price on poultry because I used to pay quotation price.

Q. 22. What do you mean he put up the price?
A. He never put me a price under the slip.

Mr. Kroppy: I object to this. He is asking for the conversation and he is telling something about putting prices down.
The Court: Overruled.
Mr. Kroppy: Exception.

The Witness: He put me up a price on the ticket when I bought the poultry of 37 cents. The market quotation on that day was about 25 cents, 23 cents and 2 cents premium.

Q. 26. 23 cents and 2 cents premium?
A. Yes, sir.
[fol. 809] Q. 27. So he was charging you how much above the——
A. 35.
Q. 28. How much above the market?
A. 8 or 9 cents.

By the Court:

Q. 29. About how much above the market?
A. About 8 cents.

The Witness: I told him "What is the matter you put me up a price, you never used to put me up a price, I used to pay you quotation prices in the store." He said, I think, "I will see you next week in the store, I think we are going to have an association soon."

Q. 32. Did he say who was going to have an association to?
A. He didn't tell me nothing.
Q. 34. Did he say the marketmen?
A. Yes, of course the marketmen all over will be one price.
Q. 36. What did he say about the association?

A. All will be one price and any place you are going it is one price among all of the marketmen all over the city. He didn't tell me about the prices. That is all he told me, nothing else. On September 21st, 1931, the price was 8 cents above the market quotation for premium poultry. I don't remember what the price was after September 21st, decrease sometimes, increase sometimes. Before September 1931, above the market quotation I was paying between 3 and 4 cents. It stayed 8 cents above the market to about November 15th.

I read in the paper that there was going to be this trial two or three weeks ago.

It dropped in price from the 8 cents above the quotation about the time I saw in the paper that there was going to be a trial. Yesterday the market was 25 to 26 cents. He didn't put me up any prices yesterday but I was to pay him between 29 and 30.

[fol. 810] Cross-examination.

By Mr. Kaufman:

The Witness: I am a butcher and sell meat and poultry. I have been dealing with Seewald eight months. There are plenty of wholesale markets in my neighborhood. I used to buy from Louis Winkler and Harry Sidofsky. I don't know how many other markets there are in that neighborhood besides the Majestic and Winkler's. I never go around at all. I can buy any place I want. I also bought from Barney Reeder. Mr. Seewald told me he thought there was going to be an association and that the price was going to be the same all over. I did not go anywhere else to see whether the price was the same. When he wanted to get 8 cents above the market from me, I did not say all right. I did not pay it. I paid only 4 cents. He treats me nice and I got nothing against him and that is the reason I didn't go anywhere else. I heard that butchers are charging the same price. Butchers do a lot of talking. Seewald is still charging on his books against me the difference between the 8 cents and the 4 cents.

Further cross-examination.

By Mr. Eisler:

The Witness: The time I paid him the 32 or 33 cents was September 19th or the 23rd. When I took the poultry I

didn't pay yet. I told him I wouldn't pay him the quotation and I went and he said, "Go home." That was the time I asked him about the price. I resold the poultry at 34 cents.

Mr. Eisler: If your Honor please, I desire to make a motion with respect to the testimony of this last witness especially in view of the reason assigned by your Honor in overruling Mr. Kaufman's motion. I move to strike out the testimony of this witness on the ground it is incompetent, irrelevant and immaterial, and I respectfully except to the ruling that your Honor made overruling Mr. Kaufman's motion at the time the question was asked.

The Court: Denied.

[fol. 811] Mr. Kroppy: May the record show a motion to strike out on the grounds I have urged before?

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 812] Louis Kugler, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: In the summer of 1929 I was a retail poultry dealer in the east side of Manhattan. Up to June 1929 I had been buying my poultry from the Howard Live Poultry. I don't know who the partners are. Bennie Franzel is all there is in the market there.

I have heard of the L. W. Credit Association. I don't know exactly when it was formed, 1928 or 1929. I think it was over a year before the criminal trial. I am telling you I don't know exactly. I think it might be just a few months prior to the criminal trial.

After the formation of the L. W. Credit Association, besides the Howard Live Poultry Corporation, I went to Abe Wolf's market on the east side but he isn't there now. I asked him to sell me poultry. He says he wouldn't see me, I got to go back to the Howard. He says "Even go to the District Attorney if I don't want to sell you." He kept me there till about half past seven after the killing and then

he told me he wouldn't give it to me, I got to go back to Howard.

He says, "If I give you stuff, I have to give up the business."

I never heard Abe Wolf or any other marketmen use the words "the business" before. Abe Wolf did not say what he meant by "the business."

I went back to the Howard after Abe Wolf had told me to go there. I bought poultry there a few months. I also went to Hoffman Brothers in Williamsburg, Brooklyn, and [fol. 813] bought poultry regularly from them. He told me once that Louis Weidberg called him up he shouldn't give me no stuff but he says anyway Louis Weidberg can't interfere with my business, I can do with my stuff whatever I want, so he killed after that.

Mr. Kroppy: I move to strike it out as far as Louis Weidberg is concerned.

The Court: Denied.

Mr. Kroppy: Exception.

The Witness: I killed stuff there after this. At that time I did not go back to the east side to buy poultry, I killed by Hoffman.

I tried to buy poultry during the summer of 1929 from Louis Weidberg. He did not mention anything to me but he sent out Lipshitz. I think it is Isaac Lipshitz and he told me, "You owe some money to the Howard if you pay it, I will give you stuff." "I don't owe no money." I said, "Why don't you give me stuff?" I came out from the office and he said "I can't do it, I can't sell you any stuff to you." He did not say why he can't sell me any poultry. Louis Weidberg said he wouldn't give me but he did not say why.

Cross-examination.

By Mr. Kaufman:

The Witness: I never owed the Howard any money. I have been doing business with Howard for a few months. I left them in the summer I think either 1928 or 1929. That was the time I went to Abe Wolf. That day I went back to the Howard and stayed there a few months after this and then I went to Brooklyn with the Hoffman Brothers. I was getting whatever I want from the Hoffman Brothers except Sundays. Sundays I used to get it at the Howard.

The reason I don't get it from Hoffman on Sundays is because he is closed on Sundays. I don't kill by Hoffman now. I kill on the east side by Mirotznik and Rosenberg. [fol. 814] I left Hoffman in 1929 in the middle of the week. He said "Louis Weidberg called me up I shouldn't give you any stuff, I can't give you." I testified before that he said after Louis Weidberg had called up that Weidberg can't interfere with his business. A month or two later he said "Louis Weidberg called up and I cannot give you any stuff." Then I went back to Howard for quite a while and then to Weidberg. Weidberg sold me. That was after the L. W. Credit Association. I don't know how long there was an L. W. Credit Association. I heard the butchers talking about it. I don't know who they were.

Q. Did you continue to hear about the L. W. Corporation, was it a couple of weeks, a couple of months or a couple of years?

A. A couple of months.

Q. A couple of months?

A. Yes.

Q. What is the answer to that?

A. A couple of months over a year.

Q. You continued to hear about the L. W. Credit Corporation for over a year?

A. Yes.

Q. You are sure of that?

A. Yes.

Q. And who did you hear talk about the L. W. Credit Corporation?

A. The butchers and dealers in the market.

Q. And you are sure it was for over a year?

A. I think so.

The Witness: I can't tell you exactly the first time or the last time I heard about the L. W. Credit Association. When I went to Abe Wolf he did not ask me whether I had paid my bill at Howard. He just said he wouldn't sell me, to go back to Howard.

Mr. Kaufman: I move to strike out the testimony of this witness.

The Court: Denied.

Mr. Kaufman: Exception.

Redirect examination.

By Mr. Rice:

The Witness: I do not know whether any marketmen were being paid any money in the summer of 1929 by L. W. Credit Association. No one ever told me that. I never [fol. 815] saw anybody watching the Louis Street Poultry Market in the summer of 1929.

Recross-examination.

By Mr. Kaufman:

The Witness: I know Harry Rosenfeld. He is on my block in the business. I talk to him.

Mr. Kroppy: I move to strike out this witness' testimony on the ground it is hearsay as far as all the defendants in the case are concerned and on the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

The Witness: I sell the best class of poultry. Rosenfeld sells seconds and he sells broken stuff.

Mr. Rice: The Government offers in evidence Exhibit 50 for identification, which is a certified copy of the judgment obtained against the Square Deal Poultry Corporation.

Mr. Kroppy: I make the same objection to its admission on the grounds previously stated, that it is immaterial and irrelevant to the issues in this case.

The Court: Objection overruled. It may be admitted.

Mr. Kroppy: Exception.

(Marked Plaintiff's Exhibit 50, previously marked Plaintiff's Exhibit 50 for identification.)

[fol. 816] Maurice Cooper, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness on a former trial in October, 1929, was read in evidence, pur-

suant to stipulation, subject to objection and exception as to competency and materiality:

Direct examination:

The Witness: My business is meat and poultry. I have been in that business three years at 5407 Thirteenth Avenue. Prior to the summer of 1927 I bought poultry from Uneeda Live Poultry. The owners of that are Paul Sosnick and Sidney Sosnick. Those are the two men (identifying them).

[fol. 817] Before I started to buy from them, they came to see me and asked me to give them my business. The price was as much as the rest of them and also three to five cents above quotation. I have continued to buy poultry from them up until today.

I tried to buy from Beach View Chicken Market. One of the owners is Samuel English. I went to the Beach View in the latter part of August or early part of September, 1927. I dealt a week or so and I stopped again. He said he could not very well sell me as my bill has got to be cleared up before—the past bill in the other market. He said on account of the organization he cannot give me no poultry, my bill has got to be cleared up, and so forth. When he was selling me poultry he once delivered an order to a street corner instead of to my store. He said he must not sell me because he is in the Chamber of Commerce. Mr. English said that if I want to buy off him poultry, I should not buy from him all, buy a little with the Uneeda and a little with them. After about a week or more, buying from him, he said that he could not sell me any poultry any more as his organization, or the Chamber of Commerce so-called, found out that I am buying poultry from him. He said they find out he is delivering poultry to me.

I had conversations with the Sosnicks during this period about the quality of poultry they were selling me, off and on, complaining the poultry is not going so good. They said they have still worse in their market and this is the best that is going. I did not try to buy from the Blythbourne. I did try to get poultry from Carosi & Parmente; that must be also in the middle of the summer, July or August, 1927. I bought from them a few days. I knew that that isn't the market for me, because they are only retailers, but they came down and approached me about

buying poultry from them. I paid this firm in the vicinity of 39-42 cents a pound. I had been paying Uneeda immedi- [fol. 818] ately preceding the time I went to Carosi & Parmente, from 43 to about 51—2—3. Whether I got the same quality of poultry from Uneeda as I got from Cariso & Parmente, this is a thing you cannot tell. Poultry is a peculiar article. I believe the quality was about the same.

I tried to buy poultry only through another butcher, Mr. Nathan Grossman. He sent me down poultry only one morning. On the day I got that poultry, I had a conversation with Sam Gold. He was trying to straighten out difficulties between me and Uneeda and I shall go back and buy from them. He said different things but he said I would be foolish to go away from them. And the best thing for me, I shall buy again from Uneeda and they will try and treat me better. I cannot recall anything else. He said if I went to other places I would be stopped from buying and that I will not succeed in my business so good. He said he does know that I have slaughtered poultry elsewhere and that it is easy for him to find out just what I am slaughtering. He said the best way would be for me not to do that and go back to Uneeda. He said he stopped Grossman from getting poultry. That is Sam Gold sitting there (identifying him). The poultry I got from Carosi & Parmente was as good poultry as I got before; I cannot say much better.

Cross-examination.

By Mr. Sager:

I talked this morning, not with Mr. Oseas, but somebody else in his office. That man showed me a statement or what purported to be my statement this morning and asked me questions from the statement. My lawyer prepared an affidavit for me to sign in connection with this transaction and he turned that over to the District Attorney. At the time that that affidavit was made out I was very angry with Sosnick. I can't remember just how much I owed [fols. 819 & 820] them at that time. I still owe them money on the July bill. I gave him a check for $322 that came back on March 16, 1928.

Q. Didn't you give him one on March 19th for $322, and didn't that come back?

A. If you have got the proof there, it is so.

Q. Didn't you give him a check for the same amount on March 20th and didn't that come back?

A. I do not know; if you have the check there.

Q. Didn't you give him one on May 28th for $128 and didn't that bounce back?

A. I do not know. Maybe it is so, if you have got it there.

Those conversations were entirely with Paul Sosnick. I had no talks with Sidney Sosnick as to these matters. Sam Gold came down to me a great many times and many times I called on him. That was because Sam had at one time been employed in the Uneeda Company. At that time I owed bills of approximately four or five hundred dollars to Sosnick Bros., and they were going business as the Uneeda Poultry Company. I went to Carosi & Parmente, that undersold them, for about a month, a month before. They were Italian dealers. They sold me chickens at about 39 to 42 cents a pound. I paid more to the Uneeda Company. I bought Rocks from Uneeda. They are a higher class chicken. Leghorns are cheaper; I did not buy exactly Leghorns from Carosi & Parmente, probably a few were mixed. The breed of chickens has something to do with the price. Some are meatier chickens and are preferable in my trade. Plymouth Rocks are about the best chickens we have. The Leghorn is a smaller chicken, and smaller in its fibre and is lighter in its flesh. Through Sam Gold I arranged a settlement by which I paid off my bill and am now paying it at the rate of $10 a week; the bill amounted to four or five hundred dollars.

[fol. 821] The following testimony was given by this witness on this trial:

Direct examination.

By Mr. Rice:

The Witness: My retail poultry store is in Borough Park, Brooklyn. Before September 19, 1931 we didn't have a steady place as usual; our steady place was at Sunset Live Poultry Market, run by Louis Aronin. Before September 19th of this year he charged between 3 and 5 cents above market quotations. On the last part of Sep-

tember, 1931 we began to pay 8 and 12 cents. I had a conversation with him two or three days after September 19th at my place of business. He said according to others, he is charging us bargain prices, that is less than other marketmen were charging. He was charging, as I said, probably between 7 to 12 cents above the market. I was asking the reason. He said the combination of marketmen is formed and he must charge those prices. He said the Tuttle organization or Tuttle combination. That is all he said, I didn't have much conversation with him. He said he will be bound from higher windows to charge according prices to be fixed for it and that he was bound to charge 7 to 12 cents above the market. He did not tell me who compelled him to charge that. I don't think he said anything about dividing up customers.

I know Mr. Berkstein of the Church Live Poultry Company. I talked with him about ten days ago in my place of business. I had not been buying poultry from him recently. He was trying to get us on as a customer, as he promised us that another combination is going to be formed in the future. He did not say what that combination was nor did he say anything about price fixing or division of customers. That is about all. He said if I will go to him [fol. 822] as a customer this minute he will treat me right at the time when the combination will be formed. He said the thing that was broken up recently would not last very long and another combination is going to be formed and he advised us to go to him, as he is a bigger marketman we could get a better deal out of him at the time of the combination.

When I talked to Louis Arónin I said that he should let me go to another market to kill my poultry. So he said that I am supposed to know that he is charging me a cheaper rate than I can get anywhere else. Furthermore it would not make much difference as he would get his profit just the same. He did not say how he would get it. I had a conversation with Samuel English of the Berkshire Market at the synagogue on the 20th or 21st of September. I said "Sam, you are always crying that business isn't so good, yet you are going to a synagogue where the prices of tickets are the highest." So he said, "The money that I made for this holiday, I can buy all the tickets out." Also probably he didn't mean it seriously, but this is exactly his

expression. I was asking, "What is this supposed to be? Is it forming another organization?" He said, "You will find it out in a day or two yourself."

Mr. Kroppy: No cross-examination. I move to strike out this witness' testimony on all the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fols. 823 & 824] Jacob Miller, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination.

By Mr. Oseas:

I have had a butcher, meat and poultry market at 638 Kelly Street for the last ten years. In the spring and summer of 1928 I bought from Manne Bros. I also tried Salthe and Steinberg. Salthe sold me at that time, but when I went away from Steinberg of the Monroe Poultry Market, Steinberg says he can't give me stuff, I shall go back to Salthe. Salthe didn't want to give it to me because I went away from him. I went to Manne Bros. Sam Manne said they didn't want to give me stuff. I got to go back to Salthe. Salthe wouldn't give me.

I tried Goldstein & Gross; they would not give me. Once I went to William Simon's market. He said to come over and he will give me, but he didn't. I tried Bloom Bros.; they can't sell it. They are not defendants. When I went back once to Steinberg, I got from Steinberg poultry. At this time when I was going from market to market, there was no place at which I could get poultry. I put up some butchers to buy some poultry for me. I went out to some chicken markets to get poultry and I couldn't get it, and all of a sudden I got from Steinberg. When trouble started, he called me up to come, but after he didn't give anybody.

During this time I saw Tootsie Herbert or Charlie Herbert in the neighborhood of the Monroe about two or three times. I heard that one of Tootsie's brothers said to

Brownsville butchers to get the hell out of there right away from this neighborhood. I came in to Steinberg and said, "What going to be?" He said, "You know what is to be. It cost me two cents for the gangsters"—that is the word he used—"one cent for Earle Salthe—I leave you off two cents from the bills, too." I got the bills here.

[fol. 825] I had a conversation with Sam Manne at this time in regard to what Manne Bros. were doing. He said, "I get paid $150 a week to keep closed, and my brother Dave gets 150, too."

The Court: That testimony is received only as against Sam Manne.

I made a tour of several markets with Mr. Topolefsky. I tried about ten markets. I tried Schonzeit's market on July 11, 1928. The Schonzeits were in the place but I didn't speak to them. There was about fifty coops of stuff, and when I came in begging for poultry, I said I pay cash for the poultry. Bert, the boy, said, "I cannot give you; you know the reason why." I spoke to a son of Schonzeit.

I remember Benjamin Simon of Edgewater Road; that is the marketman. There was about eighty coops of stuff. He said, "I cannot give you any poultry." He said, "Here is a man watching me." He pointed with a finger. "Here is a man watching me." I never saw that man before. I tried Raby's market. I spoke to Raby and he said he cannot give me no poultry. First he said, "Where did you kill before, from where you coming?" And I said, "I am going to buy for cash." He said, "I cannot sell you any."

I also tried Frank's market. Mrs. Frank came out. There was about twenty coops of stuff on Thursday morning, I think. She said, "I cannot give you no poultry." I said "Why?" "You know why the reason." After I started to go away she said, "Give me the bill and let me know forty-eight hours before." After I start to go away I said good-by, she called me back and said, "Are you Judge Rosalsky's cousin?" I said "Yes." She said, "I just spoke to Mrs. Rosalsky," and after it comes out, a boy who works there says, "That man wants to make trouble. Let him go."

[fol. 826] I tried Tremont; there was about eighty coops of poultry. I got no poultry at all. I spoke to the manager there; I do not know his name. I tried Hornstein & Spatz. He said he cannot give me no poultry. At that time I was there I met Manne brothers there, both of them. He said, you know the reason they can't give me no poultry. I spoke to Hornstein and Spatz, both of them. I went to Max Rosen's. I came in there; they were all working. He said, "What do you want?" I said, "Poultry for cash." He said, "I can't sell you any." I tried the Webster; same thing there, they can't sell any. I spoke to the manager himself who was there; I do not know his name. Mrs. Frank and Rosen asked me for a receipted bill.

Cross-examination.

By Mr. Kaufman:

The first time I saw Tootsie Herbert by Steinberg's place, Monroe's place; that is the time he was riding up and down in a car. Once I saw him with Sidney Rosenstein in July, 1928. It was before I went around with Mr. Topolefsky that I saw these men in the car. I saw Herbert only twice. I was trading with Monroe for years and in all that time I saw Tootsie Herbert twice, once on a Tuesday and once on a Thursday. After I saw him at Monroe, I saw him at Manne Bros.; then I saw him at Monroe again, about two weeks later, 5 o'clock, half-past four or five in the morning. I saw him at Manne Bros.' place about the same time, maybe 6 o'clock on a different day. The third time I saw him was 5 o'clock, half-past five. The three visits were between 4 and 6 o'clock in the morning. I saw Arthur Herbert once by Manne Bros. and once by Monroe, and in addition I saw Charlie Herbert at Steinberg's on two different occasions. Charlie Herbert got out of the automobile and hollered in to a couple of butchers, "Get the hell out of here."

[fol. 827] PHILIP M. ROSENBLUM, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a butcher and poultry dealer in Coney Island. I bought my poultry before September 19th, 1931, from Morris Gerber's market. Morris Klieger and Morris Gerber are partners there and they have a bookkeeper named Louis Lipkin. He is the manager there too.

Before September 19, 1931, I was paying 4 and 5 cents above the market. On that day I paid 34 cents for fowl and springs. That was about 10 or 12 cents above the market quotations. The price went up to 10 or 12 cents above the market from the 19th of September, Saturday night, among all the marketmen of the city.

I asked Louis Lipkin, "Why are you charging those prices tonight?" He said, "We are now in the combination. You have to pay all over the same price for your fowl, wherever you go. You can't get it for less. We have got orders." He said it was a combination of marketmen charging one price for everybody.

Q. Did he say anything else?

A. No.

Q. Did he say anything about an office for the combination?

A. Yes, he says there is downtown a chamber, I don't know what he said or what he meant by it, but he said there is an office where every week accountants is coming down to look up the books and they see that nobody gets it cheaper than what the orders are to get for the stuff.

Q. Did he say the office did anything else?

A. What?

Q. Did he say whether the office did anything else?

A. No.

Q. Every morning?

A. Every morning, yes. He said that every morning they are calling up every marketman and charging this and this price for the stuff.

[fol. 828] Q. You mean the office was calling up every morning all the marketmen?

A. Yes.

Q. To tell them what price to charge?

A. Yes.

Q. You are sure that he said that?

A. Positive.

Q. Did he say what would happen if you went to another market?

A. Yes.

Q. What did he say?

A. He told me—I told him the price is too high and maybe he can get me some reduction. He said "I can't do it, but wherever you go you will have to pay the same price and wherever you are buying, even if you buy some place else, as much stuff you buy and whatever you have been charged the profit we have got to get."

Q. That is he said that Morris Gerber would get the profit even if you went to another market?

A. Even to another market, because they cannot refuse not to sell.

Cross-examination.

By Mr. Kaufman:

The Witness: I bought my poultry up to the 19th of September from Morris Gerber and I bought poultry there that day. I did not go anywhere else that day. I knew that the market went up all over New York City because Louis Lipkin told me about it. I asked what is the price on stuff, and he told me I can't get it any cheaper, he said and I asked Mr. Gerber who said "Here is stuff 3 cents premium; here is stuff market price and I seen the quotations—I am getting my quotations every day and the quotation showed 22 cents for fowl and 18 and 19 for springs and he charged me 34 cents a pound, and I asked him why, and he said, "Today this is the price. We have got orders not to sell any cheaper." My statement that I knew that the market went up all over town was the result of my talking with Mr. Lipkin and Mr. Gerber. I didn't go to any market in Brooklyn or New York to buy. I did not want to try to go. Other markets in Coney Island besides the Gerber market are Harrison and Joe Scull. There are other markets in Brooklyn [fol. 829] near Coney Island but how many I don't know.

Mr. Kaufman: I move to strike out the testimony of this witness, particularly that part of it where he testified that he knew that the price went up all over the city.

The Court: Denied.

Mr. Kaufman: Exception.

I move to strike out the testimony of the witness on the ground that it is immaterial and incompetent in this suit, and on the further ground that giving to the testimony the best possible construction it relates to intrastate commerce and is restricted only to the particular area around Coney Island.

The Court: Denied.

Mr. Kaufman: Exception.

Further cross-examination.

By Mr. Perlman:

The Witness: The kind of fowl I bought on September 19th are called fowls colored average heavy. It was Saturday and I did not examine the market quotation that morning. The market quotation paper you showed me dated September 19th, says "sold at 1 and 2 cents premium." That means that added to the 23 cents there is a premium of 1 and 2 cents, and sometimes that premium may be 3 cents. I don't kill premium stuff. There was premium on some of it. The premium is part of the market price when you buy premium fowl. On the 19th of September I bought some fowls colored heavy. I notice that there is no price fixed alongside of the fowls marked "colored heavy" on this market sheet. This was the premium market. There is a statement there that that is sold at a premium. We can't know what the quotation was on September 19th for fowls colored heavy, from this statement here.

Last week I paid 5 cents above. Four or five weeks now I am paying the same price I used to pay before, 5 cents. Everybody else is paying about 4 or 5 cents above the market price today. I paid 4 or 5 cents above the market price for several weeks before the high holidays this year. [fol. 830] During the high holidays every year for years and years as long as I am in business the price I pay is higher above the market price than at any other season of the year. That isn't because there is a great demand at that time from the Jews of New York for poultry. There is a great demand around the high holidays. I sell more at that time without paying my employees overtime wages. I don't know if some pay overtime wages during the holidays. I paid 10 cents or 12 cents above the market price this year. 7 or 8 weeks for sure. In the month of Novem-

ber this year I paid 4 or 5 cents above the market and in August and July the same price. I don't know if everybody else is paying the same price. What I know is what I am paying. The Jewish holidays last about four weeks' from about the middle of September until about the end of October. There is the Rosh Hashona, Yom Kippur and the Succoth holidays. During that time only I was charged 10 or 12 cents. Afterwards too. The last Jewish holiday, Succoth of this year was on 21st of October and in the month of November I was paying 4 or 5 cents.

Redirect examination.

By Mr. Rice:

R. D. Q. 138. When did you start paying four or five cents above the market?

A. As soon as we seen in the paper that the new trial is coming up with the market people.

Mr. Perlman: I move to strike it out.

The Court: Denied.

Mr. Perlman: Exception.

Redirect examination.

By Mr. Rice:

Q. Was that in November?

A. That was in the early part of October.

Q. The early part of October?

A. The end of October, about a week or so after the Jewish holidays.

Recross-examination.

By Mr. Perlman:

The Witness: I don't remember if I paid more during those Jewish holidays last year than I paid afterwards [fol. 831] above the market. During Rosh Hashona and Yom Kippur, last year I paid above the market price 5 cents. During Passover, this year I paid the same. I have no records of prices I paid. A butcher don't keep no books. At Rosh Hashona I paid 4 or 5 cents to the marketman and I charged 4 or 5 cents to my customers. I charged less this year, than last year, that is less than what I paid. I don't

remember what price I paid about Easter or Rosh Hashona of 1930.

Redirect examination.

By Mr. Rice:

The Witness: I paid 4 or 5 cents a pound above the market around Rosh Hashona and Yom Kippur of 1930. This year I paid 12.

Mr. Kroppy: I move to strike it out on the ground it is hearsay as to all the defendants and on the other grounds I have urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 832] SAMUEL FREED, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I run a butcher shop with poultry in Bensonhurst next to Borough Park. I bought poultry in 1930 at the Atlantic Live Poultry in Borough Park. I bought from that market about a week before Yom Kippur. This year September 12th I killed straight. I asked for poultry and I got it. I asked for the kind that I killed, good poultry. I was told by Sidofsky, one of the partners, to kill what he gives me. He said "Kill this or go somewhere else." He didn't say anything else. He was charging me 4 or 5 cents above the market.

On September 19th I didn't kill there. I killed in the public Live Poultry Market run by Rosenblum. I do not know his first name. I did not have any conversation with Rosenblum. He charged me 34 cents. I don't know how much above the market quotation that was. They said it is between 7 and 10 cents. That is what I seen in the quotation. Rosenblum refused to sell me poultry a week after Yom Kippur. He says he can't give me no poultry, he ain't got enough. He told me to go back to the same place where I was. That was Atlantic Live Poultry.

I went back there. They charged me 4 or 5 cents above the market. That was on the second holiday. No one ever told me in September or October that there was a combination among the marketmen.

Cross-examination.

By Mr. Kaufman:

The Witness: I paid between 7 and 10 cents during the Yom Kippur holiday and went back to the Atlantic Live Poultry and paid between 4 and 5 cents at the second holidays, the first day of Succoth. That was about the end of September, this year.

[fol. 833] Mr. Kroppy: I move to strike out his testimony on the grounds previously stated.

The Court: Denied.

Mr. Kroppy: Excepiton.

[fol. 834] Jacob Miller, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I operate a retail poultry store in the Bronx. I have been buying my poultry in the last three months from Schairdock Live Poultry Company. The partners of that market are Benny Schair and Schairdock.

I paid for poultry on September 19th, 1931 from 10 to 15 cents above the market quotation. I had a conversation with Benny Schair in regard to that the same day. I asked him why he charged so much for meat and he said, "You heard by the meeting what is going on." He said that they are trying to be combined and should be able to make money. I was by that meeting there but they threw me out from that.

At that meeting there were about 300 of the wholesalers in the Bronx and New York, Brooklyn and all over. Benny Schair said every night the marketmen are making up the price. He said the trust, that is all.

I paid 10 or 15 cents above the market from before September 19th till it was advertised in the paper that the Government will try to get an injunction against them a couple of weeks ago. I am paying today 4 cents above the market.

Benny Schair did not say anything about marketmen telephoning each other but that they are making every night the meeting in a certain place and they are making up the price.

I know a butcher named Rosenberg, 986 Avenue St. John, in the Bronx. He kills always in the Schairdock Live Poultry Company. I came in for poultry there; he told me that cost 34 cents, poultry today. I went away. As soon as Rosenberg went away he said he is going to Mr. Siegal, another marketman in the Bronx. As soon as he went away I heard Schair call up Mr. Siegal and tell him that 986 went away from him, he should take care of him.

[fol. 835] Mr. Kaufman: I object to that.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: Benny Schair told me that if Rosenberg kills at Siegal's market the profit goes back to the Schairdock Live Poultry. It was made up on that day. He says he is a member of this new association, it cost him $10 a week. Rosenberg was never refused because he killed it straight in that place and he never went away somewheres else.

I was refused poultry by Mr. Irving Glass that same night of September 19th or the next day. His market is 144th Street in Harlem, I think. I called him up and he said he got nothing for me, he can't give me no stuff. First of all he said "I send you stuff." And after I called him up and said, "What is the matter, you don't send the order?" He said, "I can't give you." A couple of days I called him up and he said "You see that red haired man, he is a workingman of the union." If I give you stuff he is going to complain, I will get hell for it. They give him me, I should give no butcher stuff, and if I give you stuff, I will have trouble after that."

I saw Charles Herbert in April before Passover 1931. He came to the market where I bought poultry, the Schairdock Live Poultry Company. He came in that market one minute before seven and the shochet had killed a couple of ducks

for me. Charlie Herbert said to the shochet. "Stop," "stop and take off your coat." He took out all the work. I said to him, "What is the matter, I need the poultry right away." He said, "Get the hell out of here because I will kill you" and then I took my hand to my pocket and I said "Get out of here, because there is going to be trouble."

I put my hand to my pocket. I got a gun with me. I got a permit to carry the gun on the last trial, 1929.

Mr. Kaufman: I move to strike that out.

The Court: Denied.

[fol. 836] Mr. Kaufman: Exception.

The Witness: Charles Herbert took off the shochet from that place. Benny Schair started to cry "What can I do with so much poultry, you take away the shochet, what will I do?" He said, "That is the rules, you don't like it, try and so something." And he started to kiss him and called the cop.

Schair kissed him, his leg, he shouldn't dare to do that, because he is going to get stuck with a couple of thousand dollars, he was crying himself. It happened that the cop came in and he started begging him he shouldn't do it and about half an hour he let the shochet he should kill again the merchandise.

Cross-examination.

By Mr. Kaufman:

The Witness: I have had a butcher store in the Bronx ten years. I have been dealing with the Schairdock Live Poultry Company for the last five years. After the night the meeting was at the Central Hotel, I commenced paying 10 or 15¢ above the market quotation. I paid that price for about 10 weeks.

X Q. 89. How long before the 19th of September did you continue to pay 10 or 15 cents above the market, was it one week, two weeks?

A. Many weeks.

X Q. 90. Was it a month?

A. More than that.

X Q. 91. Two months?

A. About 10 weeks, maybe.

X Q. 92. About ten weeks before the 19th of September?

A. Before the 19th of September, yes.

X Q. 93. You were paying 10 or 15 cents above the market?

A. Yes.

X Q. 100. For at least 10 weeks before September 19th, not less?

A. Not less, from before, not 10 weeks before September, a couple of weeks before September.

The Witness: Beginning August 6th I started to pay 10 and 15 cents above the market which continued until it was in the papers some day in November that the Federal Gov- [fol. 837] ernment is trying to get an injunction against them. Up to August 6th I was paying 4 cents above the market and the same after the early part of November. Between August 6, 1931 and the early part of November, I bought from Schairdock all the time. Nobody else.

Before August 6th I used to kill from Irving Glass.

I am familiar with the market quotations between the period between August 6th and the early part of November and I want the court to understand that I paid 12 and 15 cents a pound above the market during that period. I paid less on conditions that I should keep my mouth shut and I took off 4 cents from the bill. That is all, he gives me off 4 cents from the bill that I should keep my mouth shut. This was the price on the bill between 10 and 15 cents above the market quotations. On the bill of the Schairdock Live Poultry Company to me dated September 4th, 1931 there is an item of six pounds seconds at 23 cents. He charged me for this at cost price. There is another item of 18 pounds of Leghorns charged at 29 cents a pound. This is about 13 cents above the market. On September 4th and on August 29th the wholesale market for Leghorns was 16 cents. The next is an item of 10 pounds of Seconds at 23 cents which is cost price. Seconds are regular chickens but they haven't good breast. The item of 32 with a dash at 29 cents means Leghorns charged at 29 cents. The wholesale market price for those Leghorns on that day was 16 cents. The item "34½ B at $10.01." is springs at 29 cents which was 11 cents a pound above the wholesale market. With respect to these items the Schairdock Live Poultry Company paid 16 cents for Leghorns and 18 to 20 cents for springs. I know I told the court a moment ago

that the market price for springs or broilers was 18 cents a pound. Maybe 17, maybe 18. Show me the quotation, I need the quotation, I gave the quotation to the Federal Government. I do not want to change my testimony, maybe [fol. 838] it is 17, maybe 18. See the papers, I can't remember that day.

I started getting a reduction of 4 cents a pound since the meeting at the Central Hotel. That was the time I testified I began to pay 10 or 15 cents above the market. As a matter of fact I never paid 10 or 15 cents above the market but always got a deduction of 4 cents from that price. I took the 4 cents off before I paid the bill. On September 19th I actually paid maybe 8 or 10 cents above the market but it was marked 10 to 15 on the bill. I am sure that up to the 6th of August I always paid 4 cents above the market and that on that day I commenced to be charged on my bills from 10 to 15 cents above the market quotation. Maybe it was August 5th, maybe it was August 7th, but it was the first week of August since that meeting started. On August 6th I bought 26 pounds of leghorns from Schairdock and was charged 29 cents I think. I also bought 110 pounds of colored fowl on that date. I haven't got the bill. I can't tell you what I was charged. I have to see the quotation. They began to charge me on my bill from 10 to 15 cents a pound in August and continued till about November. There is no mistake about that.

I went to Irving Glass' before the holidays in September of this year. In this particular market now run by Schairdock I have been dealing continuously four or five years. It has been known as Schairdock's for only three years. The time I went to Glass' I did not have a dispute with Schairdock. Nothing at all. I just wanted to go somewhere else. Glass' place is in Harlem over the bridge. One day I bought there on a Friday. I called him up two days later and I said "Second me about 25 springs and fowl." He said yes he will send me. He did not send them so I called him up again. He told me he hasn't got it. He can't give me. Then I went back to Schairdock.

Charlie Herbert came into Schairdock's place early in [fol. 839] in April of 1931 a minute and a half before 7 o'clock. I looked at the clock particularly. I came in just to see if the shochet kills and it happened that he killed on that morning one minute before seven. He came in and he said, "Come out, all of them, take your coat off and come

back." The shochet had already killed a couple of ducks, just two minutes before. He didn't say*ing* to the people anything. He said to the shochet and the people "Take your coats and come out." He didn't tell them not to work before 7. The shochet knows that before. He stopped them right away off and they stopped working that morning about a half hour. I was in a hurry to get my stuff. I did not pull my gun at that time. I did not do it quick. When he took his hand on me then I pulled the hand to my pocket. I mean he wanted to hit me there that morning and then was the time I was pulling my gun. I had to wait just until the shochet went back to work and I got my stuff.

I went to the Shairdock Market that time in April about five o'clock in the morning. I should be the first one. No one was in the place at that time only Barney Schair and the partner. The shochet came in about 20 to 7. He got dressed and he was waiting till 7. I waited there to meet the schochet come in and I did that every morning. I always got there around five in order that I should be the first one.

Referring to this meeting at the Central Hotel some time in August, no butchers were at that meeting. There were 280 to 300 marketmen from Manhattan, Bronx, Brooklyn, Coney Island, all around the city. I didn't know all of them. I didn't count them. The marketmen came with their bookkeepers and clerks. There were so many people, I don't know.

I attended a meeting of butchers over in Brooklyn a few weeks ago. I don't pull a gun for nobody or say at that meeting that I was going to break the marketmen. I said [fol. 840] the Government will break them. No union was referred to in the meeting at all. Charles Secretarius Weiss started this meeting over in Brooklyn. I don't know who he is. He is not in the butcher business. He is an organizer. He started the organization in Brooklyn first and I went over to Brooklyn from the Bronx to find out what was going on. I was invited to that meeting. I did not attempt to organize the butchers in the Bronx at any time.

Redirect examination.

By Mr. Rice:

The Witness: I don't know what the Harlem & Bronx Poultry Board of Trade is. I have not attended any meet-

ings of marketmen in Harlem and the Bronx only that meeting on August 6th and that was a meeting of all marketmen in the whole city. I have heard of the Bronx Poultry Dealers Mutual Protective Association. They all have one head, they should charge one price and how to rule the business.

Mr. Kaufman: I move to strike it out as not responsive, and as a conclusion of the witness.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: The members of that association are Bronx and Harlem Live Poultry Marketmen. I do not know how many of them belong to that organization. They hold meetings now. I have not attended them and I do not know what has been discussed at those meetings.

Recross-examination.

By Mr. Perlman:

The Witness: At this meeting in the Broadway Central I did not see a shochet there. I know Mr. Tuttle. He was at the meeting. I don't know if he made a speech at that meeting. They threw me out of there. I saw many fellows making speeches. I heard the speeches, but I didn't know who they were.

Mr. Kroppy: I move to strike out this witness' testimony [fol. 841] on all the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

Mr. Kaufman: We will concede, Mr. Law, that Mr. Topolefsky referred to in the testimony of Miller was an agent of the Department of Justice who was assigned to the investigation and was making the investigation along with this witness, Jacob Miller.

Mr. Kroppy: If your Honor please, I want to make a motion to strike out the testimony of the witness Jacob Miller just read and I make the motion on all the grounds previously stated, and I would like the record to show a similar motion with regard to the testimony of Chick.

The Court: Denied.

Mr. Kroppy: Exception.

Mr. Kroppy: I make the same motion with regard to the testimony of the witness Cooper.

The Court: The same ruling.

[fol. 842] NATHAN GROSSMAN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a retail poultry dealer and butcher in Borough Park, Brooklyn. I have been buying my poultry from Church Avenue Poultry Market. I have been in the Windsor Live Poultry Market once when the Borough Park Butchers Association came over to the meeting a few weeks ago. I was there with Sam Vogel. He is a butcher in Borough Park. I heard a conversation between Sam Vogel and the proprietor of the Windsor Live Poultry Market, Mr. Cohn. He said he didn't want to give me stuff because he did not want to starve his neighbor; his neighbor came over there and begged him not to take his customer away.

Mr. Kaufman: No questions.

Mr. Kroppy: I move to strike out the testimony of the witness on all the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 843] SAMUEL VOGEL, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a butcher and poultry man in Borough Park. For the last three months I buy at the Windsor Live Poultry Market. The proprietor is Mr. Cohn. I was accompanied to the Windsor Market by Mr. Grossman. About two months ago, before the holidays, I went to the market because they don't want to give me chickens. Mr.

Cohn told me he didn't want to take away from his neighbor, the Majestic, because we are friends. He didn't want to take away a customer from the Majestic and that is why he didn't want to give me the chickens. Then I went back and bought at the Majestic. I don't remember how much I paid above the market quotation—about 32 cents—about 30 cents—I don't know how much. I did not try any place else to buy poultry.

Mr. Kaufman: No cross-examination.

Mr. Kroppy: I move to strike out the witness' testimony on the grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 844] Reuben Wiener, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a retail poultry dealer in Bensonhurst. For the last three months I was buying of H. Rubin. The members of that firm are Bennie Danziger and Aleck Siegel. Before September, 1931, I paid three and four cents above market quotations for poultry. After September, 1931, they wanted to charge me between 8 and 10¢ above the market.

I had a conversation with Aleck Siegel before the holidays in his place when I come to buy stuff. He told me all the marketmen of Borough Park and Coney Island are going to combine together and he will take good care of me and won't charge too much; he will charge me the same as my brother-in-law. He did not say at that time anything else about prices. I talked to him again between the holidays. The first day of the holidays, he put on a price of—I don't remember exactly 32 or 33 and on Yom Kippur—32 and 33 and also he gave me a price on ducks too and I complained and I said, "You said you were going to charge me the same as my brother in law", and he said, "I will straighten it out. I cannot do it now because

they come and examine the books and I have got to make the bill that way". He charged me then maybe 10 and 12 above the market quotations. I did not take off anything. He said, "Let it go another week," and then he said he will give me something off. "Let it go another week, after *suckos*". Later I took off $297 from the bill. He said all the marketmen charge the same price because they are combining together now. I went right away to Brownsville to the Prospect Market where I talked to a man I knew as Charlie. I said that they were overcharging me in Bensonhurst and I said, "Can I get stuff from you?" He said, "Yes, they were not combined yet in Brownsville. Then [fol. 845] he gave me stuff and charged me 24. Later I went to Harry Schenkman's market on a Tuesday, and I said, "Mr. Schenkman, will you sell me stuff?" He said, "I can't do it." I said, "What's the matter, I was killing by you over a year and you used to give me stuff, what is the matter?" He said, "I can't do it. I will tell you tomorrow. Tomorrow will be a meeting of marketmen. It will be decided whether I can give you stuff or not." On Wednesday I went over there and he said in a couple of weeks he will let me know. Later I spoke to Dave Litwak in a restaurant. I said, "I want to kill stuff; it is too hard to go to Brownsville, and will you sell me stuff?" He said he will let me know. He said he cannot break it up. They are just combining together. He referred to the men from the Island and Borough Park. The second day of Succoth, I was in Bennie Danziger's market. I saw Abe Harrison, Litwack and Danziger unloading stuff and I heard them talk about it. Danziger said, "We have to charge 30 cents for chicken dealers"; afterward Abe Harrison says we have to charge 30 cents to chicken dealers and 32 to butchers. And Bennie Danziger says, "What is the idea you have to charge 32 to 34?" Then he said, "All right, let it be the way you say". The price the next day was 32 and 34.

Mr. Kroppy: The same motion to strike the testimony on all grounds previously urged.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 846] JOSEPH HELLER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a retail butcher in the Bronx. I buy from Glicker about three months. It was from after the Jewish holidays, I just don't remember—it was about after the Jewish holidays I started to buy. In October, 1931, I buy all my poultry from Kalman Gross. Harry Steinberg is his partner. On Rosh Hashana, he asked me seven cents above the quotation of West Washington Market, and I did not want to pay so much, so I went over to Manne Brothers. 4 cents or 5 cents I had to pay before the holidays. Gross explained to me that during the holidays he pays extra overtime, and so forth, so he got to get more. That was all he said.

The Manne brothers, Samuel and Joseph are marketmen in the Bronx. I asked them for poultry and they told me they haven't enough for their own customers. Naturally it was late, so I went back to Gross to get the poultry. I was charged by Gross 7 cents above the market. When I came to pay the bills I said it was too much money. I told him, "I am not a customer just for a day," so he took off the three cents and I only paid 4 cents above.

I went for poultry on October 4th, 1931, to Bloom Brothers, that means The Panish Live Poultry Corporation. Isidore Bloom is the main boss there. I met him on the street Wednesday and asked him if he could sell me some poultry for Thursday. He said he will sell me if I will bring him a receipted bill that I paid my bill to Gross. I told him, "How can I pay in the middle of the week? You know how it is. You know my credit is good. I am so many years in the Bronx. I always paid my bills." He said, "Well, we have had so much loss, that we don't make any [fol. 847] difference between good customers and bad customers. Everybody must pay the bill before you come to a new place. I will sell you gladly poultry if you will bring me the bill paid." That was his explanation, that there

was so much money in bad debts that they don't make any difference between a good customer and a bad customer. He said "they". I cannot tell you whether he meant himself or every marketman. He said they lost so much money on bad accounts. This was on Wednesday and I had not paid my bills to Kalman Gross.

I normally pay my bills on a Monday for poultry bought during the previous week. We settle up once a week.

Cross-examination.

By Mr. Kaufman:

The Witness: I suppose I could go to the market men and get a bill and pay it at any time I wanted to. I never tried. I know that the market men did have very large losses from bad accounts amongst butchers. All of the market men have losses, tremendous amounts of money as a result of butchers not paying their bills. I know plenty butchers who didn't pay their bills. It is a reasonable thing for the market men to try to keep their credits in as good a shape as they can, but there is many of butchers which they are really good payers, they should not be in the same place as people who don't pay. There are just as many bad payers as there are good ones and it is very difficult to determine who is good and who is bad because a person who is good today may be bad tomorrow. Before the holidays I paid four cents and it was during the holidays that the market men asked me for seven cents above. I didn't want to pay it at first. Then I went back to him and agreed to pay it. When I paid my bill I got him to make a concession of three cents and I didn't pay any more than four cents.

Every year around the holidays during September and October the prices always go up. Around Easter time and [fol. 848] every holiday it goes up a couple of cents, but we figure, that two cents would be enough, but they claim that losses are much more than they expect—naturally, I don't know how much they lost, how much they should be charged, but I always paid the previous years two cents more—that means the Schochtim, the people who killed the chickens, they get a little more, they work overtime, and so on, and there is a lot of bad chickens which they have to throw them out in big quantities, so we used to pay two cents, and I

objected to the four cents above or three cents, rather, above. I wanted two cents or one cent, but after having a conversation and telling him this and this, he let me off three cents.

Mr. Kroppy: I make the same motion with respect to this witness's testimony.

The Court: Same ruling.

Mr. Kroppy: Exception.

[fol. 849] KALMAN GORDON, a witness called on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I have a retail poultry store for the last fourteen years in Brownsville, Brooklyn. In the past year I had a large poultry market and I had a Union Schochet, Jacob Goodnick. In this past year when I had the live chicken market I bought at Gordon's Poultry Company run by Morris Gordon and Mendel Gordon. I closed up the place about May, the end of April or in April or May, 1931. I went to the office of the union about my union man and saw Mr. Arthur Herbert, called Tootsie Herbert, a delegate of the Union and the rest of the executives there. I asked him, "I can't afford to keep no men in the place, it is too small a retail place, me and my wife are working there, so I can't afford to keep a Schochet and a man for $50.00 a week. They didn't say anything, they say we will see, we will look up that. I says, all right, look up. I went again, then they looked up. I went back to them a few days or a week later. I said, "No, I can't keep up the place with a Union man, because the place don't pay for it, it is a retail market, me and my wife work there, we want to make a living so we can't afford him." So they took off once the man and they sent me a man again. I sent him back then it was about a few weeks later I had to keep closed two weeks the market, then I opened again the place, and they promised me not to send in no men and two weeks later they sent me in a man, so I asked him, "Why, didn't you promise me not to send

in a man?" They said, "So we said". That is all. Arthur Herbert or any union delegate never came to my market. My schochet continued to work all this time, but once he stopped. It was this way: I seen a man come in the morning in the market, and the Schochet didn't work. I says, "Who sent you to work?" He said, "The Union". I said, [fol. 850] "I don't need no one". So I asked the Schochet who told you not to work, he said, "The man brought me the piece of paper from the president of the Schochtim Union". It say you shouldn't work without a man. It was addressed to my Schochet and signed by Jacob Bloom, the President of the Schochetim Union. I have a photograph of it.

(Witness produces and hands paper to counsel.)

It is in Yiddish. I can translate it.

Q. Can you tell us what it says?
A. Yes.

Mr. Perlman: I object to the question.
The Court: Overruled.
Mr. Perlman: Exception. Further, on the ground, that it is not the best evidence, the original is the best evidence.
The Court: Overruled.
Mr. Perlman: Exception.

By the Court:

Q. What has become of the original?
A. I took the original back.
Q. How did you get this photograph?
A. Before I made a photograph of it.

Mr. Perlman: Same objection.
The Court: Same ruling.
Mr. Perlman: Exception.

The Witness: I gave it back to the Local 167 Union, to Mr. Arthur Herbert on the next day at the Union office. He asked for it. The first thing that day when I had that piece of paper, I didn't know nothing about that paper, I took the paper and I p t it in the register. Two hours later, I see the President of the Schochet Union, he had a man come over with a truck and they goes over and says, "Mr. Gordon, what are you doing here?" He says, "Do anybody work in the market?" I said, "No, nobody works in

the market". I said, "How could they work in the market when you stopped off the Schochet to work." He said, [fol. 851] "I stopped off?" I said, "You didn't stop off, but you said he shouldn't work without any permission, without any man", so you stopped him off, the man to work. So Jacob Blum, the president of the Schochtim Union says to me, "Give me that piece of paper——" So the fellow who was with him says to me "Give it to me, I will read it over and see what it says." I said, "You don't know it, you are an American boy, this is Jewish." I don't know who that boy way, he works in the market. Then in a couple of hours later I had a call from a man I should bring that piece of paper back there from the Union and they would send me no man so I took a photograph of that piece of paper and the next day I went to the Union, I give them the piece of paper and he said he wouldn't send me any man. Two weeks later they sent me in a man again. That day they were calling me, I had calls one after the other I should bring that piece of paper back. I gave it back to Arthur Herbert and this is the photograph of it.

By Mr. Rice:

Q. 95. Do you know what that paper says?

A. Yes, sir.

Q. 96. Will you tell us?

Mr. Perlman: I object to it.

The Court: Overruled.

Mr. Perlman: Exception. Further, on the ground the paper is not in evidence.

The Court: Overruled.

Mr. Perlman: Exception.

Q. Will you tell us what the paper said?

A. Yes. "Mr. Goodnick, without the man you can't work, Jacob Bloom."

Q. Is this a correct copy of that piece of paper?

A. Yes, sir.

Mr. Rice: I offer it in evidence.

Mr. Eisler: I object on the ground it is incompetent, irrelevant and immaterial.

[fol. 852] The Court: Overruled.

Mr. Eisler: Exception.

(Marked Plaintiff's Exhibit 51.)

The Witness: At the time I sent away the member of Local 167 I went to the Gordon Market for poultry and talked to Morris Gordon and Mendel Gordon. They gave me poultry right away. The poultry was on the floor but I did not get the poultry. The four working men was there. There is Robby Goodman, Louie and two other men. They belong to Local 167. I am talking about Morris Gordon's market when I went to buy poultry after I had fired a member of Local 167 in my place of business. Morris Gordon Poultry Co. is the place where I had been buying poultry all of the time. They always give it to me. I bought the poultry alive. On this occasion when I was in Gordon's market, Joe, the working man that I had laid off in my market, was there and said he had been fired. I can't think of Joe's last name. I saw him talking there but I didn't hear what he said. My poultry was standing on the floor in the coops at the time. It was sold to me, and then the workmen didn't give it to me. Robby Goodnick said, "We can't give it to you unless you take the man back." Morris Gordon wanted to deliver me later at night. I didn't want it. I didn't go any place else. I kept closed my place a couple of weeks.

Cross-examination.

By Mr. Kaufman:

The Witness: I opened my market about two years ago. I rented it from a man who had a Union Shochet working for him and when I took the market over, the Union Shochet worked for me. Besides the Union Shochet I did not have any loaders or any men working in the place. I didn't take on a union man but they sent me in, they forced me in. I paid the union man, I had to pay. After I was running the market for three months, the union sent one man to me. [fol. 853] I paid him $50 a month. He did almost nothing. He only would load them once in a while; mostly I loaded the coops myself. He went to the market for me and sold poultry for me sometimes. He worked for me a couple of months. I fired him. I got along without a man a few weeks, then they sent me a man again named Meyer. He worked for me also about a couple of months. The same day that I got him, I went to the union. I told him I

couldn't afford to keep a man. They told me that there were too many of the union men who were out of work. They didn't tell me that they were starving. They told me that union men were out of work. I knew that without them telling me. At the same time that I got in the union man, I went to the union. I don't remember the date. It was the whole 20 months I used to go to the union up and back. The union did tell me that people in the same line of business as I was in, and in my neighborhood, were employing union men. One market in my neighborhood had a union man, and I know one didn't have a union man. The market that did not have a union man was Harnet's, at 427 Hegeman Avenue. One time I went to Mr. Gordon's to buy poultry. He set it aside for me and the union men refused to load me; by reason of the union men's refusal to load me, I did not get any poultry that day. I had my market closed during the 20 months, three times, for a couple of days each time, but that last time I had it closed for two weeks. Now it is open, but it don't belong to me. I didn't sell it. I closed the place.

Q. You closed up the place?
A. Yes, the union closed me up.

Mr. Kaufman: I move to strike that out.
The Court: Denied.
Mr. Kaufman: Exception.

Q. When did you close up your place?
A. It was about three weeks after Easter of this year.

[fol. 854] The Witness: When I say I closed up the place, I do not mean that I rented the place to anyone else. I still have the lease. A man is running that market now. I don't know his name. I do not work or ever go there. I did not rent the place to the man who is running the market now. I never closed my market on account of alterations.

I owed Gordon, the marketman, at the time I closed up my market, about $1100, which I still owe him. I did not close up my market because I could not pay my bills. I have a chicken store on Blake Avenue, in Brooklyn, which I opened about two months after I closed the market, in my own name. Gordon did not sue me for the $1100. I paid him once $100, when I had it. After I paid that $100,

I still owe him $1100. Gordon is my uncle. He would sue me, but he did not do it. I don't go to him any more. I buy all over for credit. Gordon is the only one I owe money to in the market. Up to the time I closed my market, three weeks after Easter, I bought a couple of hundred dollars worth of poultry a week from Gordon's. I did not make any payments to Gordon—for the last four or five weeks before I closed, except I paid him, last day I closed the market. The balance at that time was about $1100 and I paid him $100 since that time.

Redirect examination.

By Mr. Rice:

The Witness: Morris Gordon never refused to sell me poultry.

Mr. Kroppy: I move to strike out all the testimony of this witness on the grounds previously stated.

The Court: Motion denied.

Mr. Kroppy: Exception.

[fol. 855] WILLIAM SIMON, Witness

Mr. Law: I offer the exhibit marked 22 in evidence in the criminal trial and ask that it be marked Exhibit 52 in this case.

The Court: It may received.

(Marked Plaintiff's Exhibit #52.)

A stipulation was made that William Simon, if called, will testify precisely as he did at the criminal case, and that upon questioning by defendants' counsel, he will answer that he knows of no further troubles in Greater New York or at any of the railroad terminals or in West Washington Market since the Fall of 1928.

Pursuant to the said stipulation, the following testimony of William Simon given on the former trial in October, 1929, was read in evidence, subject to objection and exception as to competency and materiality:

[fol. 856] WILLIAM SIMON, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

Direct examination:

I am what is known as a marketman. I was a member of the Chamber of Commerce and joined when they organized in 1926. I have remained a member up until this very day. [fol. 857] I have been on the board of directors until Mr. Sahn got in and then they appointed me as vice-president, late in 1927. When I first joined, Albert Winkel was president and after he resigned, Dave Hirshon was president until the end. I was a director when Major L'Esperance resigned in the spring of 1927. He was to organize a credit system, but he kept promising and they did not organize it, and of course the members were kicking, and he said he could not organize it for a while, and he held a meeting and went away and sent in his resignation. That was the only discussion prior to that time. Price-fixing was never discussed at any one of those meetings.

I remember when Benjamin Simon became supervisor. I had a conversation with him just prior to that time in the West Washington Market.

The Court: I will receive it as against the defendant Simon.

Benjamin Simon asked me that I should talk to the board of directors and see if he could not become supervisor of the Chamber of Commerce. I told him I will talk it over and I will see and let him know. I talked it over with several members, Samuel Sahn, Spatz, Mr. Rosen and Mr. Gordon, and then there was an appointment made to meet him. We met him and a conversation took place then. He could not take the job as supervisor unless a committee would go up to the Attorney General, and ask the Attorney General for a man, and he would be the man, so he will try to get leave of absence and then become supervisor of the Chamber of Commerce. A committee was picked out, I don't remember how many, three or four. The committee came back and said that they got leave of absence for Mr. Benjamin Simon at the Attorney General's office for three months to try to be supervisor of the Chamber of Commerce.

[fol. 858] After that I attended several directors' meetings at which Benjamin Simon was present. The first meeting was held by the body of the Chamber, and Mr. Simon was introduced as supervisor for the Chamber of Commerce for

the next three months. Mr. Simon got up and gave them a talk; that was the end of the meeting; they all went home. About a week later Mr. Simon called the board of directors and he asked us if we could go out in the different boroughs and pick out men from the different boroughs to be the head of the business and to run this business. He asked if it could be done to collect a cent a pound for the merchandise being sold in every borough. Well, we told him we will let him know. All the leaders went home and they come back about a week later and they told him it was impossible and it couldn't be done, couldn't collect a cent a pound. Well, he says, if a cent a pound could not be collected, could any other moneys be collected. We asked him how much money he needs; he says he has got to have no less than $2,000 a week. We asked him for what the money is needed, and he said he wants that money to build terminals in New York, the poultry should come to New York; he wants to build a credit system in every borough, to have offices in every borough, so a butcher could not run from one borough to the other and move away with the marketmen's money; so he could keep check on it. He has got to have money to build an exchange; he has got to have money to fight the unions, and so forth.

We were trying to collect $2,000 a week in Greater New York. After, the $2,000 a week was divided in certain percentages in those boroughs. Harlem was taxed 10 per cent, $200; Bronx, I believe it was 20 or 22 per cent; every borough was taxed according to percentage to make up the $2,000 a week. And we started—Borough Park started first, Williamsburg started next; I think the Bronx and Harlem was then the next, and Brownsville was last. After [fol. 859] this was arranged, there was two men to each section appointed to go out and run this business, so that people should not sell merchandise without receipted bills, they should see receipted bills before they sell merchandise, to buy up some certain trade, and that is the way it could be working.

Mr. Benjamin Simon picked out for Bronx, Mr. Spatz and Mr. Rosen; for Harlem, Louis Cohen and myself, and on the East Side, Mr. Mirotznik and Mr. Weidberg; Williamsburg, Mr. Sahn and Mr. Mamber of Mamber & Pepper; Brownsville, Mr. Hirshon and Mr. Gordon; Borough Park and Coney Island, Mr. Gold.

The $2,000 was to be used by the supervisor for terminals or building and exchange and having in every borough a credit system, to fight the unions, and so forth. First, Albert Winkel did the collecting for my district while he was president. When he resigned, Mr. Wolas and Mr. Louis Cohen collected. Those who paid were Chimple Poultry Company, run by Susnick Bros. They paid some weeks $75, some weeks $100, some weeks $50; all depends on the business. 144th Street, Glass, paid the same thing. Rifkin, 135th Street, paid about $50. Next was 122nd Street, Wilkins & Rosen; they paid about $50. Next was Levy & Schaier; some weeks $75, some weeks $100. Next was Romaner, 104th Street; he paid $100 a week—$75 a week. I don't know what Winkel paid. Schiller & Levy paid some weeks $125 and some weeks $150. Max Kaplan paid about $50. Cohen & Glassberg paid once in a while $25; they never paid steady. Karp & Jaffe, about $75. I don't think any other people paid any money.

This money that was collected was paid off to certain people who did not interfere in the wholesale business, did not take any customers. They were paid so much a week. The agreement was—they claimed they cannot make a living—business is bad, and only to help them along we made [fol. 860] certain conditions with them to give them $50 or $75 a week. They were not to sell to people who come in without a receipted bill. We paid to Brown & Bergenfeld, I believe $100 a week. Brookside Poultry Company, $150 a week. Benjamin Kaplan, 108th Street, was getting about $125 a week. And there was a fellow—some Italian, 129th Street, was paid by Mr. Wolas or Mr. Spatz. They were paying them through me. Benjamin Simon, the supervisor, got $200 a week. I made payments to those three and Benjamin Simon many times. This money was brought to me. I did not keep any account of the money that was collected and paid. The collectors told me that they paid other people with the rest of the moneys collected in my district.

Benjamin Simon said it is none of my business what he is doing with the $200 a week I paid him; he has certain obligations to meet and has got to pay them. There was no report made at any of the meetings, directors' meetings, or any of the meetings of the Chamber of Commerce, as to what was being done with this money. The supervisor got a salary of $300 a week from the Chamber of Commerce,

and these $200 payments were in addition to that. I saw several times money passed to Benjamin Simon by Mr. Hirshon, Mr. Spatz, Mr. Sahn, Samuel Gold. I never got a receipt for the moneys I paid him. These collections and payments were not discussed at board meetings or at meetings of the Chamber. They were discussed in every section separately. I only took care of Harlem, nothing else.

We met at the Lexington Hall, 116th Street and Lexington Avenue. The first meeting was held before we started to collect any money, about the month of June, 1927, after Benjamin Simon had told us he wanted this money. We called everybody together and told them we are organizing a credit system and we would have to have some money. That they are willing to allow to a certain trade, to keep [fol. 861] certain trade, and if they will produce their books and we shall see the customers there, we told them to keep them and no one would interfere with them. They were all in favor of it; they were all satisfied. I told them about these collections. We started to collect around the month of June of 1927, until about the 1st of January, 1928. Then the 1st of January we broke up and stopped collections for four or five months; the Harlem and the Bronx did the same. Then we started to collect over again until we were stopped by the Government.

As a credit association, nothing was done. We were supposed to have an office in every borough, and if a butcher ran away from the Bronx to Brooklyn or from the Bronx to Brownsville, he should be found the next day. They got the habit now, when they take from one marketman a large bill of merchandise, the next day the marketman goes in and finds a lock on the door and it takes him years to find him, where he went. The credit association did so much. A butcher, if he owed any bill, they did not get any merchandise; he had to pay my bill. If he showed a receipted bill, he gets merchandise; and if he did not, he can't get it.

I actually collected moneys myself on one occasion. On that day I must have collected from Jumel Place and Glass and perhaps 122nd Street. This slip of paper which you show me I received from Albert Winkel. This shows the percentage of money to be raised by each section.

(Marked Government's Exhibit 36 in evidence.)

Mr. Oseas: May I read just one column to the jury? Bronx, 21½ per cent.; Harlem, 10; East Side, 16½; Brooklyn, 16; Brownsville, 17½; Borough Park, 18½. Then a line is drawn and underneath a total of 100 per cent.

[fol. 862] I never saw any people in Harlem come around to me with receipted bills. A butcher's bill should be payable every Monday for the week ending Friday. I did not employ any people for this credit association. We had no running expenses as far as I knew, aside from the rent of the meetings. Benjamin Simon once asked for $1,000 extra and I think he got it for a week or two.

Cross-examination.

By Mr. Jacobson:

While Major L'Esperance was supervisor, we marketmen had discussed in the Chamber of Commerce the credit situation about which I have talked, for several months, and that continued after Mr. Simon became supervisor. The matter of how butchers would go around from one store to another was talked about at these meetings. It was within two or three weeks after the time Mr. Simon became supervisor that we agreed upon the forming of the credit association. Up to the time that we agreed upon the credit association, nothing had been said about collecting money. We started the collecting at the time we started the organization; then Mr. Simon appointed these various heads to take care of this district. It was two weeks after the credit association was organized that the question of the collection of money came up. When Mr. Simon came in as supervisor, the plan was there and we submitted it to Mr. Simon. We had talked about this very thing in the State Attorney General's office when Mr. Simon was there; he was the man who acted for the Attorney General in seeing about this poultry trade. We had had many meetings at the Attorney General's office with Mr. Simon and talked over various phases of the poultry trade. When he became supervisor, he told us that that plan could be put into operation. The fact that he came from the Attorney General's office and advised it could be done, was why we done it.

[fol. 863] Mr. Winkel also told us about Commissioner of Health Harris, Dr. Harris having suggested that the wholesale and retail should not be done in the same market. We discussed that and spoke of it to Mr. Simon. We believed it was all right to do it. When I spoke about Mr. Winkel resigning as president, I meant that his term expired in 1927. He ran for re-election against Mr. Hirshon and Mr. Hirshon was elected president. Mr. Simon was the first man that spoke to us about raising money necessary to carry into effect the various things that were suggested and advised by him. He appointed the heads of the various districts; these districts had been there for years. The various marketmen were known by their districts and have been for many years. When he suggested that, I called a meeting of the Harlem and Yorkville marketmen after the other sections started. I was concerned with those only in our own district. That meeting was about the collection and credit system. The credit system had always been talked about whenever anybody talked.

Some market men paid money and other people received money from the collections made in Harlem. The people who were to get money, that was spoken about in the Lexington Hall in the section; that question we did not discuss at all in the Chamber of Commerce; that came up between our own few men as a part of our Harlem matter. Some of these marketmen sold their wholesale trade to others. Where they did not sell their trade, they did not interfere—they were selling only once in a while and we gave them a few dollars to help out the people, they should not interfere—in this way, that if the butcher comes in, he should not sell unless he shows him a receipted bill. A butcher has no name; a butcher has only got a street number, of his store; as soon as he left his store, he was in a new district and we knew that he was dealing with somebody and then we wanted him to produce a receipted bill where he had been dealing. These marketmen were then [fol. 864] told not to sell to butchers who did not produce receipted bills and to whom they did not sell previously. Whether they were told that anything would happen to them if they did not do it, I do not know; there is nothing happened in my section. I do not know of anything. They told them to keep away from them. Nothing happened.

Some people who received money for wholesale were Brown & Berkenfeld, the Brookside Poultry Company and Kaplan, 129th Street Poultry Company.

Q. In your district were there butchers who were buying on their own name for other butchers whose credit had been destroyed?

Mr. Oseas: I object.
The Court: Sustained.
Mr. Jacobson: Exception.

Out of the money that I collected in my district, I did not pay any money to butchers. There was a marketman in 74th Street who got money from my district, I don't know his name; that is in addition to the money I testified about. Brown & Bergenfeld did a retail business only and were paid not to sell wholesale. The same was true as to the Brookside Poultry Company and Kaplan and 129th Street and 74th Street also. 74th Street must have got about $50 a week; I would not say for sure. There was one in 144th Street that got money; that was a retail market, paid by Mr. Spatz not to sell wholesale; he bought the entire business. That was a Bronx matter. Brown & Bergenfeld's retail market was paid a certain sum of money a week not to do a wholesale business. If a butcher owed money to some other market, instead of paying the bill to that other market he would go to Brown & Bergenfeld and not pay the market where he owed the money. When Brown & Bergenfeld were given money not to do a wholesale business, that wholesale business was done in the other place.
[fol. 865] This plan broke up about January 1st, 1928, in Harlem and Bronx, because Mr. Salthe came into the business and start to sell everybody, everybody that came along. They took away everybody and they start to buy from Salthe. They owed money for some time to the marketmen before they paid it and stopped dealing with our people and went to Salthe.

Cross-examination.

By Mr. Hallheimer:

I remember being present on the 25th day of August, 1927, at a meeting of the Chamber of Commerce, together with Albert Winkel, Morris Gordon, Sam Gold, Samuel

Mamber, Jacob Reisner, William Simon, Max Rosen, Louis Spatz, Dave Hirshon, Louis Tartarsky, and Samuel Sahn. I do not remember the supervisor discussing the erection of a central slaughterhouse; I would not say it was not discussed, I don't remember. I remember him at that time saying that money was required to prevent future strikes—to build up a strike fund, in other words; his advocating the collection of a fund for the erection of a poultry terminal; his report about moneys that he had received, and his saying he got it in the bank, but didn't say what bank or where.

I was a member of a committee that co-operated with Mr. Simon and with the Attorney General, and with the Port Authority, for the erection of this terminal, and on a number of occasions I went with Mr. Simon and the Attorney General and Mr. Howard C. Forbes, the supervisor of the Poultry Exchange, down to the offices of the Port Authority, where that matter was discussed. I couldn't remember when that was. There were meetings held before Mr. Simon became supervisor on that matter. At these meetings in the offices of the Port Authority they didn't discuss exactly figures on it, the price, but tried to get the ground, where to have it built. We tried several sites. It [fol. 866] was conceded by everyone that it was a tremendous undertaking and would require a great deal of money. No terminal was ever built and nothing has been done about any of these other projects. I do not know what happened to this money.

Mr. Kroppy: I move to strike out the testimony of this witness on the grounds previously stated.

The Court: Motion denied.

Mr. Kroppy: Exception.

Mr. Law: I offer in evidence Exhibit 9 for identification.

The Court: Mark it Exhibit 9 in evidence.

[fols. 867 & 868] Samuel Weiner, called as a witness in behalf of the Government, being first duly sworn, testified as follows:

The following testimony, given by the witness on the former trial in October, 1929, was read in evidence, pur-

suant to stipulation, subject to objection and exception as to competency and materiality:

Direct examination:

I have a retail chicken store. Between the summer of 1927 and the summer of 1928 I was located at 807 East Tremont Avenue, Bronx, and I bought poultry from Isidore Frank, Max Rosen, F. G. T. Poultry Company, Monroe Poultry Company, Schonzeit, Manne Bros.—in general, every market in the Bronx and Harlem. I continued buying from everybody until I find myself in one place, that of I. Frank about September, 1927. After September and October, 1927, I tried to buy from the F. G. T. Market, where I spoke to Izzie Gordon. He said, " I can't give you any poultry. I would like to tell you why, but I can't; you go back to Ida Frank."

I also went to Max Rosen and spoke to the bookkeeper, Charlie Lipkin. He said, "I can't give you no poultry; go back to Ida Frank." I also went to Schonzeit's place and spoke to Willie. He said, "I would like to sell you, you are a good boy, but I cannot." One time I went in to Max Rosen and I got poultry.

As to the conversation I had with Lipkin, I came in that morning for poultry and he said to me I would—as I walked in the door, rather, all the men inside started to sing to me that beautiful melody, "You know you belong to somebody else." It sounded kind of funny. I asked "What do you mean by singing that song?" He said, "You know, I would like to sell you poultry, but I can't; go back to Ida Frank." I said, "What the devil do you mean? I am not married to her." He said "Go back and get your poultry or close your store." I said I wouldn't close my store, I will get poultry, and I went out.

When I went to the F. G. T. Poultry Company, Izzy Gordon said, "You are a good fellow and I like you, but [fol. 869] I cannot give you no merchandise." He said that he fought for me at the meeting, that he didn't want to give me up, and that he is afraid of the tiger woman, Ida Frank. When I went to K. Gross, his son-in-law said, "If you walk around the corner, I will give you stuff. I will bootleg it for you." At Manne Bros., Sam Manne told me they wouldn't give me any poultry, but he said he is going to close up next week.

I tried every market what was in the Bronx; there are about a dozen. I tried the Dexter Poultry Company, but I did not get any poultry there. I had to go back to Ida Frank until about April. Then the association broke up and I got all the poultry I wanted until about the end of April. Then, bang, the doors went again. After April, 1928, I went back to Ida Frank. After April, 1928, when I went back to Ida Frank, I tried to get poultry from other markets, the same bunch. I did not get any poultry.

During this period when I was buying from the Franks only, I was charged five cents, six cents, seven cents above the market; that is about all. During this period in April when I could buy wherever I pleased, they sold at the cost price, a cent above, two cents above; sometimes they got liberal and they charged me three. While I was buying from Ida Frank, I tried markets outside of the Bronx, at Mount Vernon, New Rochelle, Harlem, Yonkers, and did not get any poultry. The man who was in charge of the Monroe when I tried to buy there was defendant Aaron Steinberg.

Cross-examination.

By Mr. Jacobson:

I dealt with I. Frank alone, continuously, from about the Jewish New Years in September, 1927, until April, 1928. I got most of my stuff from him. During that time I tried several places and was unable to get poultry. I tried the Dexter Poultry Company, run by a man named Ole [fol. 870] Salthe, and spoke to Nathan Pomerantz. He said, "I cannot sell you, Sam." He gave me no reason; he did not tell me he was afraid of being stopped or anything of that sort, nobody told me that. He did not tell me to go over to the place where I was stopped and he did not sing or whistle any melody then. He just told me that he cannot sell me. I would not say he did not sell once, I am in doubt. How many times I asked him I can't recollect. I knew what the condition was in the Bronx. I knew that the Dexter Poultry Company were then receiving their own goods in the Bronx and that they were not members of any credit association or any association. They sold to everybody for cash.

I went to Salthe without cash. My purchases were running about six or seven thousand dollars in a week. I had four or five stores and was about the largest butcher in the Bronx. Salthe did not want to sell to any chicken dealers, only to butchers.

We had a retail chicken dealers' association in the Bronx. I was president of it. I knew what the conditions were in the Bronx, and they were not good. I had been in the slaughterhouse business in 1926 and 1927. I gave it up. It was not profitable to me. I went in again in 1928 and 1929 and gave it up again, as it was not profitable again. That was the time just before or just after this credit organization. During the time of the credit organization, I was president of this retail chicken dealers' association in the Bronx. We didn't have a rule in our association that no chicken dealers was to put out a sign with prices on it and we didn't go to Mr. Frank and Mr. Spatz and ask them not to sell chicken dealers, members of our association, who put out a sign. I boycotted Frank, not the chicken dealers' association; with the help of the marketmen we succeeded. That was about July, 1928. It was at this time that they closed the doors again, that is what I mean. I felt pretty sore against Mr. Frank. With the help of the marketmen, [fols. 871 & 872] it was I who procured the boycott to be done. Frank charged me five cents, six cents and seven cents above market quotation, depending upon different prices prevailing at the time on the better grades of poultry. We drew a very sharp distinction between chicken dealers and butchers. We wanted the chicken dealers to get poultry for less than the butchers.

By Mr. Oseas:

In the summer of 1928 I attended a meeting of the poultry dealers at which some marketmen were present—Sam Goldstein, Max Rosen, Louis Spatz. I recollect about the meeting but I don't recollect just what was said. I think we talked about opening up the door. When we asked them about the open door, they said they would let us know later. They did not let us know later; they did not have to; they opened it up themselves.

By Mr. Jacobson:

Our association demanded a price at less than the butchers.

[fol. 873] The following testimony of this witness was given at this trial:

Cross-examination.

By Mr. Kaufman:

The witness: I am still in the chicken business. I am working right now for my brother. I supply his stores and some other people's stores. Since the indictment I have not had any difficulties in connection with the purchasing of poultry. I buy whenever and wherever I please. I am still president of the Bronx Chicken Dealers Association. Chicken dealers deal only in slaughtered poultry and buy from the marketmen.

Redirect examination.

By Mr. Rice:

The Witness: I mean I have not had any trouble since the trial held in the Old Post Office Building.

Recross-examination.

By Mr. Kaufman:

The Witness: I testified at the criminal trial that they opened up the door in the summer of 1928 and by opening up the door I mean that there was no difficulty and people could buy wherever they pleased. I am not quite sure, but I think in the summer of 1928 we could get poultry all over, and since that time there have been no difficulties of any kind from anybody even in the association.

Redirect examination.

By Mr. Rice:

The Witness: After the association of the Bronx market men broke up in 1928 I do not recall that they reorganized again for a while. I know Ole Salthe in the Bronx. He went in the business about 1926. I am not sure. I do not recall that the association broke up when Ole Salthe went in business.

I would say that my trouble stopped in the Bronx two or three months before the criminal trial.

[fol. 874] Recross-examination.

By Mr. Kaufman:

The Witness: I testified the trouble stopped in the summer of 1928. If the criminal trial was not held until October, 1929, I don't think there was any trouble for over a year before the criminal trial.

Redirect examination.

By Mr. Rice:

The Witness: I don't remember dates. I am not a walking calendar. I know we didn't have much trouble after they broke up the first time. I don't remember how long it was before the criminal trial that my trouble stopped.

Mr. Kroppy: I make the same motion to strike out the testimony of this witness on the same grounds as previously stated.

The Court: The same ruling.

Mr. Kroppy: Exception.

[fol. 875] ALEXANDER PERLMAN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: In 1929 I was operating a retail poultry market in the Brownsville section, Brooklyn. After the criminal trial, I did not hire a union man of Local 167, I did not need any.

Mr. Kaufman: I move to strike that out.

The Court: Denied.

Mr. Kaufman: Exception.

The Witness: I have been in the live poultry business for a number of years. I never had a union man in my place; I did not need a man because I did not do the stretch of business that others were doing. I was buying from

Kassel Poultry Company, and when I pulled over to get my poultry, I was refused to be loaded. I said to Dave Kassel, "Dave, why can't I get poultry?" He said, "I can't load the poultry without a man. The men won't load it. What am I to do?" He said, "You will have to take a man once a week," and I said then, "I can't afford to pay $12."

Mr. Kaufman: I move to strike out this conversation between him and Kassel.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: Then he said, "You can't load poultry." So I said, "I ain't doing much business in my place and if I will go broke, I cannot help it. I will have to take a man and pay $12, although I can't afford it because I need that for my family." So they sent a man to me and I gave him $12. He was there a couple of hours and then he went away and they kept on sending men there for about three months once a week. Afterwards the last man come there, and seen that I really could not afford a man, because I sell [fol. 876] only about four coops of chickens a week——

Mr. Kaufman: I move to strike it out.

The Court: Denied.

Mr. Kaufman: Exception.

The Witness: So he went back and told the union that I really cannot afford to pay it and they stopped sending me a man. The work in my market was done by me and my son. He is about 24. My wife helped in the place, too. At that time I sold about 8 to 10 coops of poultry a week. This David Kassel that I spoke of is a commission man in West Washington Market.

I had a conversation with Max Keslin in West Washington Market about December or November of 1929. He had always stopped the men from loading; he followed me around wherever I want to get poultry from one commission stall to another.

Q. Did he talk to you?

A. Well, I had nothing to say to him, because I would not answer him.

Mr. Kaufman: I move to strike that out.

The Court: Denied.
Mr. Kaufman: Exception.

The Witness: I know Charles Herbert. I knew them when they were little boys. I saw Charles Herbert and Max Keslin walking around the market but I don't know what they were doing. At the time I went to the Kassel Poultry Company, they loaded the poultry on the truck after I had taken the man for once a week. A load of poultry was taken off my truck the first time, before I took the man. That was after the criminal trial. I don't know exactly whether they were of Local 167 or what they were, but the man who took the poultry off my truck worked for Kassel on the stand. I never paid any attention to their local. I cannot remember whether they said anything to me at the time or when it was, but they took the poultry off [fol. 877] and I had to go upstairs and see Kassel and straighten the matter out and take a man for once a week. Kassel said they would not load it unless I took the man. I did not hear anybody else say that. I was in his private office. When Max Keslin followed me around, simply he told the men not to load me any poultry. He said, "You can't get any poultry without you get a man," and the men refused to load the poultry for me. It was Max Keslin that told the men at Kassel's Commission House to unload the poultry. He was with Kassel alone that time. After the poultry had been unloaded from my truck I stood around the market a little while and then I spoke to Dave Kassel, so he told me to go upstairs, and I had a conversation with him. He told his men to load the poultry after I had agreed with him to take a man.

I seldom went to the New Jersey terminal to buy poultry. I sent my son there. When he got back, he had the poultry.

I know Harry Shomer and Dave Kaufman by sight. They are delegates of Local 167. They were in my place before I got the man in there, they wanted to know whether I should have the man or not. I said that I had no use to take a man in my business because I didn't do enough business to carry a man. Then they went away and said, "We will see about that." That is about all they said. It was after that that my truck load of poultry was unloaded by the men at the Kassel Poultry Company.

Cross-examination.

By Mr. Kaufman:

The Witness: In December of 1929 or thereabouts, Kaufman and Shomer came to my place and talked with me about putting on a union man. That ain't the first time. Four or five years ago they wanted me to take on a union man. I did not take one on at that time. Along in December, 1929, they talked to me again about taking on a union man and I said I did not need one. They said I [fol. 878] would have to have a union man in order to get poultry loaded. I told them I couldn't afford it. Then they left saying that they will see about it. A short time later I went to the Kassel Poultry Company where I continued regularly buying my poultry. I selected my poultry after it was brought over with the trucks from the railroad. The time that some men unloaded the poultry from my truck was late in November or early in December of 1929. The Kassel Poultry Company agreed to sell it and I agreed to buy it and it was loaded on my truck and then Max Keslin came over. He told me that I did not have a union man and that therefore they were going to unload the poultry. Then I went up to see Mr. Kassel. Before I went to see Mr. Kassel, I knew I was having this difference with the union, they saying that I should have a man one day in the week and I saying that I could not afford it. I told Mr. Kassel that the loaders downstairs would not load my truck and he said to me what is the matter. I said to him, "I have a difference with the union; they want me to take a man one day a week and I don't want to do it." He said he could not give it to me because the man would not load it. I cannot load it myself, and he said, "You will have to take a man one day a week." He said if I could load it myself, I could take it away. Naturally I could not load it myself. I couldn't go around hiring anybody to load it. I needed the help of those union men on the stands in order to lift those large coops on my truck. Kassel said to me, "Try and settle up with the union". I did not see Kesline to settle up, but I asked Kassel to straighten it out with the union for me. I did not agree at that time to take a union man one day a week on Thursdays. I didn't want to; I was compelled to, that is all.

Mr. Kaufman: I move to strike that out.

[fol. 879] The Court: Denied. I understand what he means. I am not going to take that as anything more than his statement.

Mr. Kaufman: Exception.

The Witness: I told Dave Kassel to straighten out with the union for me and then I would take a union man one day a week Thursday, which is the biggest day in the poultry business. The salary for the man is $12 a day. That man continued to come to me on Thursday for 12 weeks at $12 a day. I never went to the union or told Arthur Herbert or Harry Shomer that I could not afford to continue that man. I only spoke to the men who worked on the place and proved to them and they seen it themselves that I really didn't need a man in my place. I paid him the money and told him to go home. I said, "I don't need you here." All during the 12 weeks I told him that I could not afford to pay him and he left. Since that time I haven't had a union man and I haven't had men who were not union men.

Mr. Kroppy: I will ask the Court to rule that the testimony of this witness is only binding on the defendants Keslin and Shomer whom he mentioned and not against the others.

The Court: I have not reached the point of making a ruling at all. I will make the rulings when we get through.

Mr. Kroppy: I move to strike out all the testimony of this witness on the grounds previously stated.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 880] Abraham Perlman, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I was in business with my father, Alex Perlman, in 1929. I went to West Washington Market in December, 1929, for the purpose of buying poultry. There were various places we went to, Kassel Live Poultry and

Norris, Fleck, Collins and some others. I went throughout the year 1929.

I know Max Keslin. I have seen him all the time in the West Washington Market. I believe I did see him in December, 1929. I don't remember exactly what took place at that time. I know about that time there was a little trouble but I don't know exactly what it was. He said something to me at the time. He said, "You can't get no poultry, you are on the blacklist." I was in front of Kassel's stand. I didn't have any poultry yet. That is about all I remember. He told me I was on the blacklist. He told me to see the delegate of the Teamsters or Chauffeurs Union. I don't recall if I got poultry that day. I don't exactly remember what I did after that. I just remember he told me about being on the blacklist, that is about all. He is probably an official in the union, that is about all I know, the chicken workers union. I guess it is Local 167 of the Chauffeurs Union. I think it is the same union in which Arthur Herbert is the delegate. My father, Alexander Perlman, told me that some officials of the union wanted him, in December, 1929, to take on a union man for one day a week. I wasn't there. Of course, we discussed it between ourselves, and I came to that conclusion, that he could not afford to do so. At that time he did have a shochet working in the place, but he was not a union man. I don't know if, at that time, anyone made a request that he put a union shochet in there. After my father told me the [fol. 881] delegates of the union had called on him, we went to West Washington Market for some poultry, to the Kassel Poultry Company. It was loaded on his truck and then the union men unloaded that truck because we did not have a union man working in our place. My father then went to see Dave Kassel and told him that the union would not load his trucks. That is the time that Max Keslin said that we were on the blacklist. He used the word "blacklist". I understood by the term "blacklist" not having a union man or employing a union helper. I recall that Mr. Kassel said to my father, "We will sell you the poultry but the men won't load it". It was understood at that time that if we could load the truck ourselves, we could take the poultry away, but we could not call upon the use of union loaders for the purpose of loading our truck. My father did make some kind of an arrangement with the union man for one

day a week, but I don't know what his arrangements were. I know that a union man came to the place to work one day a week on Thursday, which is the biggest day in the poultry business in the week. I cannot recollect so very clearly how many times this union man came in. Four weeks I should judge. I don't recall that my father told me that he was going to discuss the matter with the union and tell them that he could not afford a union man, and that I could do the job myself. I don't know that he told me anything about discussing with the union the fact that he could not afford to continue paying this union man.

Mr. Kroppy: I move to strike out this witness' testimony as not binding on the marketmen in this case and also on the other grounds previously stated.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 882] DAVID WEINER, Witness

Stipulation was made that the following testimony given by David Weiner at the criminal trial could be read in evidence as against all defendants except Joseph Rosenman, subject to objection as to its competency and materiality, and that if the witness were called, he would testify that outside of the one specific instance about which he testified at the criminal trial he has never been interfered with in connection with the delivery or hauling of poultry.

Direct examination.

By Mr. Oseas:

I worked in April, 1928, for Levit Hauling Company. I drove their trucks. I remember during that month driving a truckload of poultry to New York from Philadelphia. [fol. 883] That poultry was consigned, part of the load, to Hudson Poultry, and part of the load to Harnett. First stop was West Washington Market, Hudson Poultry. When I reached West Washington Market, Hudson Poultry, I have taken off part of the Hudson Poultry, and just as I was going to leave the market I did not know where Harnett's place was, so I inquired at the Hudson Poultry

Company. Finally a man called the steward of the market, he held me there for a while, saying that if I would go to Harnett with poultry he would show me the way from the Williamsburg Bridge where he said he had men waiting there for me to stop me and to destroy the load. There is the man (indicating defendant Max Kesslin). He did not say anything else to me or I did not say anything else to him. Next was where I couldn't say, when all of a sudden I seen three or four machines come around with well-dressed fellows. That was up in the market. There I had been detained a while, while my helper went upstairs to call up the Eagle Poultry Company. I have been told by some of these fellows who came in the machine that if I do not return to Philly with the load of poultry they would throw it in the river and destroy it. I see one of those fellows here (identifying defendant Charles Herbert). I also recognize another. I mean Mr. Arthur Herbert. I do not see any others. I have not had any other conversation with these people or the group of people in which these men were since then. On that occasion I did not have any other conversation with men in that group. After they told me this I just returned back with the load to Philadelphia. I saw two machines following us. They are the same machines in which the men drove up in West Washington Market. One, I am sure, was the Chevrolet sedan and the other, I am not quite sure whether it was a blue Buick or Willys-Knight. But they were the same machines that these men drove up in to West Washington Market.

[fol. 884] By the Court:

We were in Jersey City when we first noticed these men following us. Next I saw them in Newark. I did not see them after that.

By Mr. Oseas:

I did drive more poultry into New York after that. I have delivered one load of poultry to the Greenpoint Poultry Company. I have not had any other conversations with these defendants whom I have identified, or any other defendants besides the one about which I have already told you. I am sure.

By the Court:

I lived in Philadelphia. And this second load of poultry I was bringing from Philadelphia also.

By Mr. Oseas:

I have given the complete conversation that I had in West Washington Market that first time.

By the Court:

I did not have any talk with these defendants on my second trip.

Cross-examination.

By Mr. Kaufman:

I have been working for the Levit Hauling Company for four years. I am working for them now. This incident that I just referred to took place in March, 1928; at the time that I met Mr. Kesslin in the market. I think it was the latter part. That was not the first time I delivered poultry into the West Washington Market. I delivered poultry there before. I had never seen Mr. Kesslin before [fol. 885] that time. On this occasion I had a load of poultry that was to be delivered to the Hudson Poultry Company. They have a stand right in the market. I had to deliver one-half of the load to them. Mr. Kesslin was a steward in the market. That is what working fellows told me in the market. On this occasion when I made a delivery of one-half a load to the Hudson Poultry Company Mr. Kesslin was not working around. Some of the workmen in the Hudson Poultry helped me unload this poultry. After I got through loading the poultry I made inquiry as to how to get to Harnett's place in Brooklyn from one of the Hudson Poultry help. He told me he would show me, but then I do not know how it was, and how it happened, that all of a sudden this here workman come up about me not going there. I asked some workman in the Hudson Poultry Company how to get to Harnett's place in Brooklyn. He said he would show me how to get there. Then after that there was an argument. They called the steward of the market. That was the man I referred to as Mr. Kesslin. I could not tell you who called the steward of the

market. He did not ask me whether I had a union book. I am not a union man. I was not at that time. No one on that occasion asked me for my union book. I talked to Mr. Kesslin and Mr. Arthur Herbert and Mr. Charles Herbert came around. They did not ask me for a union book or whether I was a member of the union. All they said to me was that if I delivered that poultry to Harnett they would throw it in the river. I didn't ask them why. They didn't say anything else to me. That is what they kept saying, that they would not let me go through with it. There was no reference made in words or substance of my not being a member of the labor union. With respect to Mr. Kesslin, I was told he was steward of the market.

Before April, 1928, I delivered poultry into Washington Market, and after this incident I have just described with [fol. 886] Mr. Kesslin and the two Herberts, I continued to deliver poultry in the Washington Market. This notation that I have just referred to is the only time that I ever talked to Mr. Kesslin or with those two Herberts. I did not know them before that time. After this, in March or April, 1928, when I came into the market, I used to say hello to Kesslin about two or three times. I have seen Arthur Herbert once after this incident you have just referred to. I never saw them before that. In March, 1928, I saw Mr. Kesslin two or three times afterward and I said hello to him. Now on those occasions when I said hello to this man those were the times when I was delivering poultry into the West Washington Market. I never had any conversation with them except to say hello. When I got into court here Mr. Kesslin was not pointed out to me by anybody. I spoke to Albert Levin, but not about this. He is one of the witnesses called by the Government. He is the only one that I talked to. Either about these defendants or the testimony I would give. I talked to Mr. Rice. He didn't point out anybody to me in particular. He just asked me to look who I could see to identify. Mr. Shalleck objected to Mr. Rice pointing out defendants to me. Mr. Rice then moved me from the front seat inside the rail there. And then he continued to point to defendants. He was pointing out to see who I could identify. He was not pointing to anybody. He says, "Just look about and see who you can identify." He did not tell me in what row or what seat any of the defendants were sitting in. I did

not tell Mr. Rice before I got on the witness stand the names of the defendants that I was going to identify. I was not talking to Mr. Rice in the front row behind the rail even a minute. After I came inside the rail I talked to Mr. Rice about a minute. He asked me the same things that I had told him before. Well, he just asked me who I could identify and I told him.

[fol. 887] Q. Didn't you two minutes ago tell us that you didn't tell him that, that no names were mentioned?

A. I said the best I could just identify, that is all.

Redirect examination.

By Mr. Oseas:

When I was told to take the Harnett load back to Philadelphia they says that I should never come to the West Washington Market again, or if I was going outside of the West Washington Market to let him know and see if it was O. K. to the blackballers, the ones who are blackballed from the market; the poultry dealers are blackballed from the market, see, and they cannot get any poultry in the West Washington Market, so they come to Philadelphia, see, and we ship it over to them.

Recross-examination.

By Mr. Kaufman:

But in spite of what they told me at that time, I did continue to come to West Washington Market. At that time those men didn't give me a card telling me where to notify them. They have told me where to notify them.

Q. Didn't you just a minute ago say they didn't tell you where to notify them?

A. But you have been telling me about a card.

Q. Didn't they tell you to notify them at union headquarters?

A. Union headquarters, I suppose so, at the Hudson Poultry.

Q. Didn't they tell you to notify them at union headquarters?

A. No, sir.

Q. They didn't say anything about unions?

A. Yes, sir.

Q. Now when I asked you before whether they said anything about unions you said, "No, sir," didn't you? Didn't they tell you they were delegates of that union?

A. Yes, sir.

[fol. 888] Q. And didn't they inquire from you whether you were a union man?

A. Yes, sir.

Q. Didn't they ask you to bring your union book if you dared come back into the market again?

A. No, they did not tell me about any union book.

Q. Why didn't you tell us this before when I examined you? I asked you before the very questions that I am asking you now and you testified before that at no time was the word "union" mentioned; why didn't you say that before?

A. Listen, at no time did they tell me if I had a union book or whether I belong to the union. Nothing was ever mentioned to me about a union, and, what is more, I never belonged to a union.

Q. What did they say about the union?

A. Well, they said why didn't I belong to a union, and I told them there was no union in our state.

Q. What else?

A. That is all.

Q. Why did you go back to West Washington Market if they told you to stay away?

A. Well, that was my work.

They never interfered with me in any way after that or speak to me again about not coming over there. I hauled chickens after that time for people who were not doing business at the West Washington Market. I hauled chickens to Decklers and also Hellman. His place is on 149th Street, New York.

By Mr. Kaufman:

I was told on that occasion that if I delivered in New York I could deliver to the West Washington Market, but that if I attempted to deliver outside of West Washington Market that I should notify those men at the union. So that so far as the West Washington Market is concerned

I could deliver in there. But they did not want me to deliver outside of the market unless I notified the union. I [fol. 889] said before that there is no local of the International Brotherhood of Chauffeurs, Teamsters, Helpers, and so forth, in Philadelphia. I never tried to find out whether there was a union of the International Brotherhood of Chauffeurs and Teamsters.

Mr. Kroppy: I move to strike the testimony on the ground that it has no relevancy or binding effect on the defendant marketmen and also upon all of the grounds heretofore stated.

The Court: Denied.

Mr. Kroppy: Exception.

[fol. 890] Mr. Rice: Now, I had understood that the only purpose for which Exhibit A was offered by Mr. Kaufman was to show that Judge Knox had not revoked any of the probations of any of the defendants.

The Court: I don't think there is any dispute about that.

Mr. Rice: That is conceded.

The Court: That is the way it arose, but it is in the case as evidence now. I mean there are no limits like that set.

Prima facie proofs closed.

[fol. 891] MOTIONS

Mr. Kroppy: Will your Honor entertain motions?

The Court: Yes, make all the motions you want. I won't hear argument.

Mr. Kroppy: You won't hear argument?

The Court: No, not at this time. Make any motions you want to make. As I told you, I am going to hear testimony on both sides before any major questions are determined.

MOTIONS TO STRIKE AND TO DISMISS

Mr. Kroppy: I do not know if it is necessary to repeat the motions I have already made to strike out the testimony adduced by the Government in this case to prove the conspiracy alleged in the amended petition, but I move again to strike out all of the testimony introduced by the Govern-

ment on the ground that it does not tend to prove the existence or continuation of the conspiracy alleged in the amended petition since the fall of 1928 or the beginning of 1929, and on the ground that none of the market men have been shown to have participated in, or to have been members of any conspiracy in restraint of interstate commerce during this period.

Furthermore, on the ground that they have not been shown to have participated in or become members of the conspiracy alleged in the amended petition or any conspiracy with the other defendants in the case or with anyone else during the period covered by the amended petition, since the fall of 1928.

Also on the ground that all the testimony in evidence indicates that if any conspiracy at all existed during the period in question, that is, since the fall of 1928, they were several independent and separate conspiracies on the part of the defendant market men or the union men which have no relation or any connection with the alleged conspiracy alleged in the amended petition; that they occurred subsequent to the time that the original conspiracy alleged in the [fol. 892] amended petition was discontinued and abandoned in the fall of 1928; and on the ground that these separate organizations and separate conspiracies, if they may be so termed, do not in law constitute competent evidence to prove the general conspiracy, the single conspiracy alleged in the amended petition.

Also on the ground that these so-called subsequent conspiracies engaged in by some of the defendants named in this case had reference to and affect merely intrastate commerce.

On the ground that the object or purpose of these organizations were to regulate intrastate transactions between the market men and retailers doing business within the City of New York only and not elsewhere.

I also move to dismiss the case as against the defendant market men on all the grounds which I have stated.

I also make the motion to dismiss on the ground that the activities, and the practices shown by the testimony adduced by the Government related to and affected intrastate commerce only and that if any conspiracy at all can be spelled

out by the evidence adduced by the Government it is one relating entirely to intrastate commerce and does not embrace any interferences with interstate commerce transactions since the fall of 1928 with which any of the defendant market men had anything to do.

I also move for a dismissal of the Government's case on the ground that all of the testimony relating to the market men defendants, as far as any connection of theirs with transactions for the sale or purchase of live poultry is concerned, is based entirely on hearsay evidence without any proof that the third party statements were made by co-conspirators. The third party statements were made by parties not shown by any of the evidence that they were [fol. 893] co-conspirators and their statements alone that they refused to sell does not constitute them co-conspirators and what was said by them does not bind any of the defendant market men.

I make a motion to dismiss on the general ground that the Government has utterly failed to prove the existence or continuation of a conspiracy in restraint of interstate commerce as far as the defendant market men are concerned, since the fall of 1928 or the first part of 1929, or that they ever committed any acts or participated in any acts or transactions relating to the purchase or sale of poultry in interstate commerce which were made in pursuance or in furtherance of the conspiracy alleged in the amended petition, and on the ground that there is no testimony or evidence to show that the market men have participated in any transactions which affected or interfered with interstate transactions since the fall of 1928 and since the early part of 1929.

And also upon the ground that the evidence adduced by the Government shows conclusively that the alleged conspiracy as set forth in the amended petition was broken up, discontinued and abandoned by the defendant market men concerned in the fall of 1928 and therefore that this Court is without any jurisdiction to enter any decree against the defendant market men at this time by reason of the order of the Court entered on or about April 6th, 1930, dismissing the original petition.

I also make a motion to dismiss on the ground that the activities and practices shown by the testimony introduced

by the Government, related to and affected intrastate commerce only, and if any conspiracy at all can be spelled out by the evidence introduced by the Government, it is only related to intrastate commerce and does not embrace any in-
[fol. 894] terferences with interstate transactions since the fall of 1928, with which any of the defendant market men had anything to do.

I make a separate motion to dismiss the amended petition as regards the defendants who were not convicted in the criminal trial, on the ground that there is no evidence in the case to indicate their membership in or participation in any conspiracy in violation of the Sherman Anti-Trust Act, or committed any acts in furtherance or in pursuance of any conspiracy in restraint of interstate commerce alleged in the amended petition; on the ground that they were in no way connected by any competent evidence introduced in this case with any conspiracy to which the other defendants may have been parties, or that they have taken any part in any activities since the fall of 1928, which might be considered as evidence against such defendants.

I want to add to my motions, a motion to strike out particularly the exhibits which list the members of the Live Poultry Dealers Protective Association, on the ground that no evidence has been introduced to show the nature, purpose or scope of the activities on the part of the Live Poultry Dealers Protective Association; on the ground that this Association has not been shown to have succeeded any organization, whether it be the Greater New York Live Poultry Chamber of Commerce or any other organization of which the market men may have been members; and on the ground that the evidence positively shows that the members of this Association, the Live Poultry Dealers Protective Association, were retail chicken dealers, among whom were a few, perhaps ten or twelve market men who, presumably, were qualified as members on account of the fact that they were retailers as well as wholesalers.

On the further ground that it has been shown that the Live Poultry Dealers Protective Association, existed as a
[fol. 895] separate and distinct association, apart from the Greater New York Live Poultry Chamber of Commerce, during the period from the fall of 1928 until December,

1931, and that the payments of 10 cents per coop were made to that Association without any relation or respect to any organization of the defendant market men and that there is no proof in the case to show that there was any cooperation of any kind during that period between the Live Poultry Dealers Protective Association and the market men in any association of which they were members.

On the further ground that no illegal activities have been shown to have been engaged in by the Live Poultry Dealers Protective Association or any of its members, and I want the same motions to apply to the Live Poultry Slaughterhouse Association as to whose activities, nature and scope or purposes, nothing has been shown in this case with the exception that there have been paid 10 cents per coop, for the return of empty coops, and there is no evidence to show any connection between this organization and the old organization of the Greater New York Live Poultry Chamber of Commerce.

Mr. Kaufman: On behalf of the defendants whom I represent, and also, inasmuch as Mr. Perlman is not here, I shall make the same motion on behalf of the defendant that he represents, I move to strike out the testimony of the witnesses relating to the prices paid by them for poultry during the year 1931 on the ground that there is no evidence connecting the defendant labor unions and the members of the labor unions to that increase in price, assuming there was an increase in price in any way at all.

The testimony is incompetent, in so far as those defendants are concerned, on the ground that there is no proof of the continuance of a conspiracy or their connection with [fol. 896] those acts in any wise shown.

I move to dismiss the amended petition on the ground that the Government has failed to make out a case or cause of action alleged in the amended petition, or any cause of action whatsoever, and more particularly on the ground that the only evidence there is of any acts done by the defendant labor unions and the members of the labor unions since the summer of 1928 or at the very latest the early part of 1929, except the activities of the labor unions in so far as Aaron Steinberg is concerned, Perlman is concerned, and possibly Barney Hecht, whose testimony is so conflicting and confused that it is difficult to determine precisely what he did testify to, but the record is barren

of any testimony as to any activity by the defendant unions or the members of those unions or any act or any activities, except in so far as they affect the witnesses Steinberg and Perlman, and assuming that that testimony is true, there is no showing that those acts were in any wise related to a restraint of interstate commerce.

My motion is to be construed as including all of the grounds previously stated to indicate that the Government has failed to make out a cause of action against the defendants whom I represent, as well as Joseph Rosenman.

With respect to the defendant Joseph Wiener, I move to dismiss the petition as against him on all of the grounds previously stated and on the further ground that he has in no wise been connected with the alleged main conspiracy, and on the further ground that if the rule of res adjudicata that Judge Woolsey indicated in this case is sound, to dismiss the petition against him on the ground that the indictment was dismissed as against him at the close of the Government's case and there has been no testimony in this case before your Honor, that was not submitted before [fol. 897] Judge Knox in the criminal case, and the indictment having been dismissed against him and there having not been any finding that he was one of the conspirators in that case, I submit the amended petition as against him must be dismissed.

Will your Honor dispose of that motion at this time or does your Honor want to hold all of these motions until the close of the case?

The Court: I will hear all the motions first, if anybody else has any motions to dismiss.

Mr. Eisler: On behalf of the defendant Arthur Herbert, I move to dismiss the petition on the ground that the Government has failed to prove a cause of action against him and upon the grounds urged by Mr. Kaufman and Mr. Kroppy, in so far as they apply to my client.

The Court: The motions are all separately denied, but in denying them, I will not foreclose you from being heard on any of these questions when the proof on both sides is closed. They are all denied and each of you may have an exception noted.

[fol. 898] DEFENDANTS' PROOFS

BENJAMIN SHAIR, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a marketman. I did business under the name of the Shair Live Poultry Company in the Bronx. I know Jacob Miller a butcher in the Bronx. He has been buying from me for several years. I did not commence on or about August 6, 1931, to charge him from 10 to 15 cents over the market quotation for poultry. I never charged him any such prices. The prices wasn't all the time the same, but I figured on an average between five and seven cents on fowl and broilers. In the plain weeks, we charged the market price, but if it comes to a holday and we have more expenses, I charge a cent more, sometimes. By the "holidays" I mean the Rosh Hashonna and Yom Kippur holidays in the fall, and the Easter holidays in the spring. I did not tell Miller in August or September of 1931 that there was an association and that all of the marketmen in the Bronx were charging the same price. For the period from September 19th up to about three or four weeks ago the highest what I charged him was between 5 and 7 cents. Then he took me off a cent or two a pound every week, and sometimes three cents too. It never happened that I asked Rosenberg a butcher 34 cents a pound for poultry and that Rosenberg refused to pay my price and that he left me, and that I called up Charlie Siegel of Siegel's Market, and told him that Rosenberg was going to his market and that he should not sell Rosenberg any poultry; I did not tell Miller that it did not make any difference to me whether Rosenberg bought from me or bought from someone else, because under the Association's rule, I got the profit irrespective of from whom Rosenberg bought. There is no such rule nor was there any such agreement that I know of. I remember some time in April of this year when Charles Herbert, a delegate of the Schochet Union came into my place and told the schochet not to kill. That happened on a holiday morning, and we are supposed to begin to kill at seven o'clock in the morning, and the rabbi come in, and he began

to kill 20 or 25 minutes ahead of time before union hours, [fol. 899] and it happened that the delegate Charlie Herbert come to the place and he saw him killing ahead of the time. So he asked the rabbi, "Why do you kill ahead of the time?" The rabbi said, "It's a mistake, my clock is not right." Then Miller tried to give the delegate an argument, "What is your business here arguing with him?" So the delegate stopped the rabbi from killing; and when seven o'clock came he put him back to kill. I didn't see that Charlie Herbert wanted to hit Miller or that Miller put his hand on his pocket and began to pull a gun. I was there all the time. I have produced my book in court and have had an accountant, David Meyer, make an examination of my books as to the transactions which I had with Miller during the year 1931.

Cross-examination.

By Mr. Rice:

The Witness: I am a member of the Harlem and Bronx Board of Trade. I don't know how many other marketmen are members of that Board of Trade. I attended a meeting of the Harlem and Bronx Board of Trade about two months ago at the office, at 149th Street. I don't remember whether or not Max Wolas was there. The Manne Brothers were there. I don't know which one, Joseph or Sam. I think I saw Manne Siegel there. I really don't remember any others. I got a letter to come to the meeting from the Association. There was no signature on it. I stayed maybe a half hour. The Board of Trade made it so we could pay in $50 initiation to be a member of it. We discussed that we make it a rule, for the purpose that butchers shall pay their bills. If a butcher kills by me stuff and owes me money, then I call the office and say that this butcher went away from me and owes me money.

Q. What would happen then?
A. I don't know because we didn't do anything yet.

The Witness: That was all the plan, because we didn't go any further with it. We only organized that association and we didn't do anything yet. That meeting was about two months ago. After we held that meeting, the price of poultry went down. It did not go up from three or four

[fol. 900] cents to ten to twelve cents a pound above the market quotations. I have bills to show what I paid. I don't remember that in my head. The statement prepared by my accountant shows I paid 21 to 23 cents a pound on October 16th, and 30 to 32, is what I sold my poultry for. I testified that I had not charged Jacob Miller more than 5 to 7 cents. The cost 21 to 23 cents and sales price 30 to 32 cents shows a possible range of from 7 to 11 cents per pound. The last column under "rebates" for October 16th indicates that I gave a rebate of 3 cents per pound. That was taken off from that price. I have got books to show everything. I charged everybody alike. I don't know how much the profit was on this. If I look on the books, I can say. I have got the bills to show what the stuff cost and I got the books to show what the stuff sold for and I got the books what the butchers were taking off from the bills. I gave Miller rebates of 2 and 3 cents a pound in September and October 1931 because he took it off. I never was charging too much. He did not want to pay no more. Not everybody I give rebates. He didn't ask me whether I permit or not. He said "I don't want to pay you any more; I am a big butcher and I don't need to pay no more," I did not tell Jacob Miller that I was charging him these high prices because all the marketmen were combined and he had to pay the same price all over.

In September and October, 1931, we charged the high prices because in September that was a holiday week and I did charge him a little more because it is a holiday week, and I got big expenses, and I got to get more for my poultry to cover my expenses. All the time I charge four cents a pound and holiday I charge a cent or two extra. I never charged 11 cents a pound more. I never charged the man over 5 to 7 cents above what I paid. I have nothing to do with other marketmen. I am running my own business. After he had taken off that three cents, I did not realize a gross profit on that poultry of 9 to 11 cents per pound. I never told Jacob Miller about the marketman's association or about any combination or trust.

I attended a meeting of the marketmen at the Central [fol. 901] Hotel in the middle of summer, July, of this year, with Jacob Miller. I went down with him to Broadway, then I went away. I did not hear anybody at the meeting tell him to get out. There was a lot of market people from

all over the city. We discussed on the meeting—we got to see what to do about buying the stuff, buying good stuff and getting culls for good stuff, buying poultry and getting paid for the stuff. After the meeting was adjourned, I did not hear any of the marketmen discuss prices.

In April, 1931, Charles Herbert come into the place; it was about twenty-five minutes ahead of the time—ahead of seven o'clock and he saw that the rabbi is killing stuff and he went over to the rabbi and he asked the rabbi, "Why did you start in to kill ahead of the time?" The rabbi says, "It is my mistake. My clock is not right," and it was true, it was not right, and Miller started to give him an argument, "Why do you mix in here?" Why do you interfere with this?" And Charlie Herbert stopped the rabbi until seven o'clock and at seven o'clock he put him back to work. Miller was arguing with Herbert, but I didn't hear what he told him. I told Miller, "Why do you mix up in this man's business. That is my business. What have you got to do with this man." The only thing I told Herbert was "You see, this rabbi made a mistake. That isn't my fault." so he said, "All right, seven o'clock he goes back to work." That is all the argument there was.

My stuff cost me yesterday 20 cents. I sold it for 24 cents.

[fol. 902] DAVID MARSHALL, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a certified public accountant. I made an examination of the books of the Shair Duck Live Poultry Market, Inc., with respect to the transactions between that company and Jacob Miller, and prepared a report.

(Marked Defendants' Exhibit G for identification.)

In this examination I divided up the periods by the week. The week ending for the poultry trade is Friday afternoon; the bills are made out weekly to that day and that period on the bill is the date I used. In the first column I have the

dates of the respective bills. Taking the first figure, week ending 7/31, that is the week ending July 31, 1931. The second figure in my report is the invoice number. It has reference to the information that I got these prices from. In the next column which is under the heading of "fowl—sales and cost"; in the first column set down the cost to the Shair Duck Company of the fowl that they sold. They vary according to the market prices and the marketmen charge a certain number of pennies over that market price. If the market price is, say, 24 cents one day, it may be 25 or 26 another day and the sales prices must differ in accordance with those figures. The first column where it says "sales 28-30" indicates that the lowest price for fowl sold to Miller was 28 cents and the highest price was 30, so that he may have two or three days where he might buy at 28, and several days at 30. Naturally the cost figures would vary in the same way. In the next column under the heading of "fowl" I have a sub-head of cost 24-25 cents per pound, indicating that the prices that Shair duck paid for that poultry during the week was not constant. My next column is entitled "broilers": Fowl is distinguished from broilers. I have a figure on the cost of those broilers of 26 cents a pound, and the sales price at from 33 to 34 cents a pound. The next heading is "ducks" and there is no entry [fol. 903] opposite the date July 31st. There were none sold during that week to this customer. The last column is "Leghorns". And the cost price is 21 cents and the selling price is 25 cents. Then I have the last column under the head of rebates.

In the first column under the heading "fowl sales" the figure 28 to 30, is the gross selling price charged to Miller, and from that is to be deducted the rebate of one cent a pound. In that case, at the time that he was charging 28 cents, it really would be 27 and the 30 cents price would be reduced to 29. The same way all the way across. I got this data from the books of original entry, the sales book, the cash book, which indicated the rebates taken weekly and the bills from various people where Shair Duck bought their poultry. In most cases the bills taken were from a commission house called J. M. Norris where he bought the greater part of his supply. All those books and papers are in court at the present time. Referring to the week ending October 16, 1931, the low price was 30 cents during

that week, the high price was 32 cents; the low cost price was 21 cents and the high cost price was 23 cents. From the gross prices as charged in the first column, Miller got a rebate of 3 cents a pound with regard to that item.

Mr. Kaufman: I offer in evidence the report.

(Marked Defendants' Exhibit G for identification.)

Mr. Kaufman: Then I will ask that the last paragraph of Exhibit G be marked.

(Marked Defendants' Exhibit H for identification.)

The Witness: At the bottom of Exhibit H, I averaged the total price and cost price of each kind of poultry sold by Shair Duck to Miller for the entire period from July 31st down to and including November 27th. I also averaged the rebates taken, and as a part of my report show the average gross profit to each class of poultry sold by Shair Duck to Miller during the period from July 31st down to [fol. 904] and including November 27th. In Exhibit H the figures at the bottom with averages marked show the gross in each case before any expenses of operating the business came out. That basis is carried on the first page with the difference that the average rebates are deducted in the average sales price.

Mr. Kaufman: I offer in evidence now the table prepared by the witness from Defendants' Exhibit H at bottom of page 2.

(Marked Defendants' Exhibit I.)

Cross-examination.

By Mr. Rice:

The Witness: Taking September 11th, invoice 1663 shows a price of 33 cents for fowl and if you go down the line you will find the price is the same. In arriving at the cost prices I examined the various bills that came under that particular week and looked to see which were the largest purchases made from any particular commission house. In every case I found that Norris was that particular person. I did not always select the figure that I found on the bill from Norris. At times I would take a lower figure. In the beginning I have my original working papers where

with the several sources of prices, being the average of the prices shown here, are from Norris. I don't know how many commission houses there are down the market but I estimate there must be close to 20. He might have made certain purchases of certain merchandise which he could not obtain at Norris' establishment. I obtained the figure, fowl cost here, fowl 25 cents (indicating on bill). The first item here: 1,098 pounds of fowl and here we go down again, fowl 3,649 pounds at 25 cents. Here we have it again (indicating) 25 cents. The notations on this bill are not of my making. There seemed to be small deductions there which might be for underweights. I took no account of the deductions because they may be taken for various reasons. In a coop of poultry there are times when certain fowl or [fol. 905] broilers are not up to par. In other words, they are in a sick condition and when poultry is sold they sell it by the coop. I don't think, I doubt very much that would have given a fairer picture, because we don't know and I did not analyze what the deductions were for. I did take account of the deductions made by the market man to the butcher. Following this same figure, September 11th to the last column under rebates, the rebates shown in the cash books of this concern do not indicate two cents or three cents a pound but a certain amount in dollars and cents deducted at the time the buyer pays for merchandise. Take the week of September 11th: The rebate deducted was $18.08. Mr. Shair who was with me at the time I made the examination volunteered the information that $18 would be in this particular case 2 cents a pound because he had knowledge of the fact as to how many pounds are sold. The amount sold to him that week was $318.08; he paid $300 and deducted $18.08. If we refer to this bill here we will find that the approximate amount of poultry sold is 916 pounds for the week which shows a rebate of 2 cents a pound.

From the report, Exhibit H, it appears that from July 31st, 1931, through September 4th, 1931, Jacob Miller was taking a rebate of one cent a pound; from September 11th, 1931 through September 18th, 1931—a rebate of two cents a pound; and that from September 26th, 1931, through November 6th, 1931, a rebate of three cents a pound. On November 13th and November 31st, Jacob Miller took a rebate of one cent a pound. I have noticed that when the

gross margin of profit is large that the rebate is large, but I feel it has no value in so far as this report is concerned. When Jacob Miller said that he received a rebate of four cents he might have received a rebate on fowl, on broilers, on ducks, or on leghorns of four cents, according to the figures here and a lesser rebate on one and the other commodities. I have all these rebates lumped together under four commodities; Fowl, broilers, ducks and leghorns, but the thing you must take into account is that the amount—the types of poultry bought are very heavy fowl and broilers. The other two columns of leghorns and ducks would come only seasonally. There is nothing to show from my investigation of the books that the amount of re- [fol. 906] bate on the various commodities that Jacob Miller purchased was the same.

Referring to October 30th, 1931, the gross margin on fowl was 8 cents. There is no deduction on that date, and the net margin is 8 cents a ponnd. The net and gross margin of profit on the sales of broilers made to Jacob Miller on that day was 9 to 11 cents a pound. On July 31st, 1931, the net margin of profit on fowl was 3 to 4 cents with the one cent rebate deducted, and on broilers 6 to 7 cents, and on leghorns it is only 3 cents. On November 27, 1931, the gross on fowl and broilers would be 5 cents in both cases. On ducks it would be 3 cents, on leghorns it would be 4 or 5 cents. I did not make any examination of the prices paid by any other market man.

[fol. 907] CHARLES SIEGEL, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a market man in the Bronx. I know Jacob Miller, a butcher. In the last two years he maybe bought two or three times from me. At no time this year did Mr. Shair call me on the telephone and tell me a butcher named Rosenberg left him and was going to go to my market and *and* that according to the association rule any profit that I made on any sale to Rosenberg should go to

Mr. Shair or to the Shair duck. I don't know any man by the name of Rosenberg, he never bought off me, never was a customer of mine. I do not know of any rule in the business whereby one marketman is entitled to the profit made on a sale by another to a customer of the first. I did not get any profit from anyone else. At no time during the summer or early fall of this year did I promise Mr. Miller on the telephone to deliver some poultry to him and later on call him back and tell him I couldn't give him any poultry. I never spoke to the man. I met him a couple of weeks ago and he greeted me nicely on the street and I even asked him a few weeks ago how he sometimes buys and sometimes doesn't and why we don't take care of him. That is the only conversation I ever had with him. I never heard of any butcher in the Bronx charging 10 to 15 cents above the market quotations for poultry, during the summer or fall of 1931; but I know one thing; that my business didn't increase and if they charged any such prices my business would go up an awful lot.

Cross-examination.

By Mr. Rice:

The Witness: I am a member of the Harlem & Bronx Poultry Board of Trade. I have attended meetings the latter part of October, at the Franklin Casino. There was an attorney, Mr. Greenfogel and Mr. Wolas was there, Mr. Brumberg, that is not all, but a big percentage of the market men engaged in the industry in Harlem and the Bronx. I should say about 12 or 13 or 15, or something like that. I got a notice, a card I think it was, and it was [fol. 908] signed "Committee." Our business had been carrying this year more than any other year, great losses from doubtful accounts and bac accounts more than any other year I have been in the industry. A discussion was brought up how we could obtain some credit information about the different people that we sold merchandise. They are not rated in Bradstreet and Dunns, there is no way you get information. We needed some information that we could go to and find out how they were on their credit and Mr. Greenfogel said that such a plan could be arranged legally to make such a position possible, and that in that way we could know a little more about who we are trusting

so much money to. The plans were to be laid by the attorney. They gathered from the different business men what credit information they could about these different customers and keeping them on record. If a man came in to me and wanted credit I could refer to that information and use my own judgment whether he is good credit. The Board of Directors would send us each a report and it is up to the man to use his own judgment of how much that man is entitled to. It wasn't the plan outlined at the meeting that a market man should report any loss of customers to the Central Credit Bureau or to the office maintained by this association. There was no plan to divide up the customers or to keep our own customers and sell to other people's customers only when we got a receipted bill. I didn't hear anything at that meeting about demanding receipted bills. I have been in this poultry industry 18 years. I don't remember whether in 1927, 1928 and 1929 I heard anything about demanding receipted bills in those years. The truth of it is I never was involved in anything. I always ran my own business and nobody had any claims that I didn't do the right thing by them.

By the Court:

The Witness: I heard Mr. Shair testify something to the effect that it was discussed at that meeting that if a butcher buys by me and don't pay his bill and goes away I was to call up the office. Nothing was said so far as I recall at that meeting about any other market man selling him.

[fol. 909] Redirect examination.

By Mr. Kaufman:

The Witness: There was no discussion that any butcher who didn't pay his bill should be reported to the Credit Association. It was only a question of who wanted to join, to sign an application blank, attach a check to it of $50 to show his good faith and to become a member and then there was an election of officers and that took up the evening.

That was the only meeting that was had so far as I know.

[fol. 910] IRVING GLASS, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a market man in Manhattan. I know Jacob Miller, a butcher in the Bronx. In September of this year I sold him poultry. I did not refuse to sell him poultry, and I did not tell him that if I sold him any poultry I would have trouble. I never pointed out a red-headed man to him and say that that man was a watcher from the union. They have no man that is red-headed in my place, never did. During the month of September, I sold poultry to Miller about three times. He never asked me for poultry that I didn't sell him. I did not tell him that there was some association as a result of which I couldn't sell to him. I never had any conversation with Mr. Miller about such a business except buying stuff. I sold to whomever I pleased; no restrictions at all. It is not true that after September 20th he called me up for some poultry and I told him that I didn't have any for him. The fact is about October he bought some poultry from me. Everytime he wanted to buy something and he was first there that morning, he took it on his machine. We never delivered to him.

Cross-examination.

By Mr. Rice:

The Witness: I had no conversation with Miller about any association of market men. I belong to the Harlem & Bronx Poultry Board of Trade. That is a credit association. I attended a meeting of the Board of Trade in the latter part of October, 1931. The discussion was that we should draw up this petition as a credit association to protect ourselves against the butchers which don't pay, which are the bad accounts. The only thing, I understood, if I want to get any information, just to call up the office and ask about a certain man that I am in doubt about. I am positive that I did not refuse to sell poultry to Jacob Miller after this meeting was held, or to anyone at any time. I

charged him from 35 cents in October, 1931. I charged according to my judgment. I don't know what other market men charged. On September 18, 1931, I did not permit [fol. 911] Jacob Miller to deduct $2.55 from my bill. He deducted it. I couldn't help myself. I can't force a man. He just handed the money, a check, and says "Take it or leave it." I just had an argument over the $2.00. The fact is I haven't sold him after that until he came down one day and told me he will pay the balance, and he never even kept his word. I don't know whether the market men of Harlem and Bronx have charged more in October than they did in July, 1931. I know only about myself. I never charged any more. Some people charged three, some people four and some five. I never charged ten to twelve cents or put that price on their bill at the time they bought the poultry. I charged Jacob Miller on September 19, 1931, for fowl, 34 cents. I paid about 28 cents, if I remember. The prices charged by the commission men in West Washington Market for a particular variety of fowl is not the same on a particular day. There is express and there is freight poultry. I sold Jacob Miller on September 18, 1931, and charged 29 cents a pound. There is different grades of stuff; that is spring chickens. Sometimes the chickens are dearer, sometimes cheaper. On the next day, September 19, 1931, I charged Jacob Miller 34 cents a pound for fowl. There was an increase of five cents per pound in West Washington Market among the commission houses. There is different kind of stuff. There is always a difference of five or six cents. I am a full buyer, I buy a very small quantity. I may pay more than other people who buy a larger quantity. I charged Jacob Miller for fowl 34 cents and broilers 34 cents on September 18, 1931.

[fol. 912] MORRIS GERBER, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am one of the defendants, a market man in Coney Island. I know a butcher by the name of Samuel

Bernklau. He has been doing business with me on and off for about six or seven years, and up to and including the month of September of this year I charged him above the market quotations 4 to 6 cents. I did not raise my prices to Bernklau on the 19th of September, 1931, so as to charge him from 10 to 12 cents above the market quotations. During the month of September, 1931, there were some of the Jewish holidays when there was an increase of a cent or two a pound. During the holiday time in September my price to Bernklau did not exceed six cents per pound above the market quotation. It never exceeded six cents per pound. I never charged anyone, whether it was Bernklau or anybody else, ten to twelve cents above the market. I had a conversation with Mr. Bernklau about my price during September, 1931. It happened on a Saturday night which was Yom Kuppur. The market was very firm and he wanted to know what poultry would cost him. I told him that my expenses are running up bigger, it is holiday week and a shortage in poultry and I am entitled to a little more profit than what it was. So I charged him out a price, whatever I thought it would be right. We didn't agree on a price and he remained to kill his poultry and I charged him out a price at the end of the week when I sent him my bill. He didn't pay so he says he will see me personally. He told my bookkeeper he will pay less. I didn't want to lose a customer so I agreed to give him a rebate of 1½ cents a pound. I killed fowl that I paid myself 27 cents and charged him 34 cents; he took off 1½ cents which came out 5½. He killed fowl which I paid myself 28 cents, charged him 34, took off 1½ cents, which only came out 4½ cents a pound. I did not tell him that he could go to any other place but he would have to pay the same price as I charged him. I did not tell him or anyone else that the price was the same all over. I did not say to him that [fol. 913] the market men had nothing to do with the fixing of prices but that the prices were fixed by the Exchange. The prices were not fixed by any Exchange. I determined my own prices.

About six weeks ago there was a meeting of butchers in a synagogue in Brooklyn and I was invited to that meeting by Bernklau who is president of a butchers' organization

in Brooklyn. Mr. Bernklau came over to my place and says to me, "We are calling a meeting tonight, I want you at that meeting." I said, "Sam, this is a Wednesday. On Thursday you know I am up at four o'clock because I got work, so I can't go very well to that meeting." "Listen", he says, "If you don't come to that meeting we will blacklist you so you won't have a customer to operate." So I came over, I promised him I would be there, I came over after the meeting. He personally, Mr. Scull and Mr. Aaronson were there. These butchers demanded from me personally that they wanted to kill the poultry straight so the chicken dealers have no cheap poultry. They wanted to kill the poultry straight. There are two kinds: The butcher and the chicken dealer. The chicken dealer sells the poorer poultry so the butcher can not undersell them in price. A butcher when he kills his poultry, he selects the poultry at the time he will kill and he pays more than the chicken dealer, 10 or 15 cents more, and we have to open more coops. The balance of that coop is being sold to any butcher at any price we could get for it. So they wanted that we should kill the poultry for them straight so there is no leavings left for these chicken dealers that buy up the cheap poultry, and I asked him what they would offer me for a straight killing, so they offered me five cents a pound. That was satisfactory to me and I told them beginning tomorrow morning that any of them can walk into my place and I would gladly sell them that way poultry; in the next morning they showed up, they said they did not agree that they should start from this morning. A few days later Sam Benklau was over to my place again, and I asked him what they decided to do. All he told me was they have had another meeting among themselves and Mr. Scull had sent [fol. 914] over a representative of that meeting and offered them the poultry for a straight killing, only for three cents a pound. I told them it would be impossible for me to charge three cents a pound, but I would take a chance at four cents a pound to see how it would work out, but they never attempted to do it. The butcher selects the particular chickens he wants to and what is left over after the butcher gets through selecting, we sell the balance to certain cull chicken dealers.

At this meeting, Bernklau spoke for this butchers' organization and wanted to make an arrangement with me to kill the coop straught, that is, take everything out of the coop. I said I would sell them straight k[illings] at 5 cents a coop. I understand they would start from the next morning, but they did not do it. Then a few days passed and I saw Bernklau again, and he told me that they had another meeting and that Mr. Scull had offered them for three cents a pound. I turned him down. I told him I would accept for four cents a pound. He said he would give me an answer after they had another meeting among themselves. He never let me know and the butchers never began to do straight killing.

Bernklau said the chicken dealers were underselling them, that they like to see that there shouldn't be any broken stuff, that they shouldn't be able to undersell them in price. I did not have any talks or agreements with any other dealers, or any other market men in Brooklyn about the prices that I should charge for poultry.

I know a butcher by the name of Rosenbloom. He has been doing business with me approximately for about 10 or 12 years, on and off. I charged him above the market quotations during the year 1931, five, six, seven cents above the market quotation. I raised the price to Rosenbloom on or about September 19, over the holidays, but it didn't exceed ten cents a pound. The holidays run from the 19th of September until about the middle of October. Every year the price that I charge for poultry goes up around the holiday time, at West Washington Market by me and by everyone else, because there is a big demand for poultry so far as West Washington Market is concerned. As far [fol. 915] as we are concerned, the expense is much bigger than it is in a plain ordinary week. I keep my market open longer during holiday times; at times as long as 20 hours a day or more, at times we don't close at all. The fact is that I don't know exactly how much I charged Rosenbloom, but I did not charge him 10 cents a pound. Approximately about a year and a half ago Mr. Rosenbloom gave me phoney checks for poultry amounting to about $1,500, checks that were no good in the bank and I was going to have him locked up. He came to me with a proposition. He told me he did not have any money to pay for these checks but he would give me a piece of property that he

owns and I should give it back to him when he pays me within a year and a half. He himself lived in the property, and the time expired November 1st. He told me he did not have the money, but not only did he do this, but he stopped paying the rent from there. So, I called him down two weeks ago to my office and asked him what he intends to do. He says, "I have no money, leave things alone as they are and if you don't you are going to feel sorry," and with this he walked away. I dispossessed him. He lived in this house during the year and a half and paid some of the rent, but he did not pay back the $1,500.

During the holiday period I keep my place open as many as 20 hours a day, and sometimes I don't close. During that period of time, I have one third additional expenses for labor, longer hours, more feed, more shrinkage. We put in so much poultry in the house that we have bigger shrinkage.

During the year 1931 I attended two meetings of market men in Coney Island, one in Borough Park, about six weeks ago, and one in Coney Island about two weeks ago. I did not attend any meetings in 1930 or 1929. At the first meeting this year, there were present from Coney Island Mr. Aaronson, Mr. Scull, Mr. Litvack, Mr. Cachano, Mr. Barker, Mr. Brockstein and Mr. Schenckman. A man by the name of Goldberg called that meeting. He was a market man from Borough Park. He said it was time for the market men that they should get wise to their credits, that they should organize a credit bureau and see that they [fol. 916] shouldn't get as many failures as they get. The matter was discussed and the meeting was adjourned with no results. I did not join any organization at that time. No one else did in my presence.

During the year 1929 I had plenty bad accounts. I had more bad accounts in 1931 than I did in 1930. When market men got together they discussed informally the question of bad credits among their customers, small butcher stores, and to chicken dealers who has a little bit bigger store. There is no credit agency which gives reports on the financial standing of these small butchers. It is not the practice in the business to ask for statements, and I never asked for them. The ordinary butcher runs up during the course of the week bills from $200, as high as $1,500, $1,200 and so on. They make payments on account,

sometimes pay in full; sometimes they don't pay at all, but go away to a different part of the city and open up a new store and are in business again. These butchers have no investments or fixtures of any kind, excepting an ice box, and a chopping block, that don't belong to them. There are people who collect the fat from the butcher and in order to get the privilege of collecting the fat they give the butcher the fixtures under some kind of a chattel mortgage arrangement.

The second meeting was held down in Coney Island, attended by about the same people that attended the first meeting, and a man by the name of Al Lipkin, an accountant. At that meeting they discussed the same thing: to organize a credit association. Nobody joined at that second meeting. I believe there is need for a credit association in Brooklyn. During the year 1931 as a result of bad credits, I have had losses of approximately between four and five thousand dollars.

Cross-examination.

By Mr. Rice:

The Witness: I charged Bernklau 34 cents a pound. Saturday, the week of Yom Kippur night, September 19th, I paid for fowl 27 cents a pound that day. I don't think there is a market man that paid only 20 cents a pound with 4 cents premium for poultry that day. After Bernklau made a deduction of one and a half cents a pound, I realized about five and a half cents per pound gross. Although I have a larger volume of business around the holidays, that [fol. 917] doesn't minimize my expenses.

I attended a meeting of market men in Borough Park about the end of October, 1931. All of the market men of Borough Park and Coney Island were present, with the exception of a few. We discussed it would be necessary for us as business men to have a credit association so our money doesn't get lost as it does. We are to have a credit association and have an office. It is a custom in the business when a butcher deals with me and at the end of the week he goes away, he don't pay his bill, he goes into another market man, that that market man does not know, and he would call me up for an examination and he would ask me how this butcher is for the money. I, knowing that

the butcher is no good because he didn't pay my bill, would have said that he was no good. He would at the same time pay me what he owes me but many of them after telling a market man he is going for the money goes away to another market, does not pay him and then goes to another market man. Before we are a few weeks older we three of us are stuck and we don't collect our money. The plan of the credit bureau was to be that if I want to know a butcher's credit, I will call up the credit bureau and when this and this man came in to buy poultry from me, find out how good is his credit and after they will tell me I will be able to use my own judgment whether I should extend credit to him or not. It wasn't discussed at that meeting that if a butcher went away from me I as a market man would call up the market man where he went. They did discuss about demanding receipted bills if a butcher comes in and he wants to buy poultry on credit. If he shows me a receipted bill that shows he is good for his credit and I will extend him credit. And if he does not show a receipted bill, I will ask him for cash for it. It was discussed that if a butcher comes and has a receipted bill that means he is good for credit and we will extend him credit, and if he didn't come in and show a receipted bill I wouldn't refuse to serve him, I would call up the credit bureau and ask whether his credit is good.

I have never participated in any price-fixing on poultry. I have never combined with any other market man to divide [fol. 918] up customers. I have entered into an arrangement with market men whereby the market men demanded receipted bills from strange customers some time in 1927. The arrangements were: If a butcher comes in and he hasn't got a receipted bill that he is to pay cash for his poultry. If he pays cash we will sell him and if he says he hasn't any receipted bill we wouldn't sell him. I did not agree with the market men that I wouldn't sell him. There was no agreement whatever to refuse to sell to a man that didn't show a receipted bill. The plan outlined at the meeting of market men in Coney Island six weeks ago was not substantially the same plan that was in operation in 1927 and 1928. I paid one cent a pound on the poultry that I sold sometime in 1927. For a couple of weeks I paid about $300 a week for a market that gave up his wholesale business right next to me and I got that business.

I didn't buy up customers. It was the nearest market to me and when I paid them the $300 they shouldn't do any wholesale business, I knew I was nearest to the trade and the trade would come in to me. Nobody brought the trade to me and I didn't employ gangsters to bring the trade—the other man didn't either. Moe Rosenstein and Abe Newman were not employed to carry the customers back to any market in Coney Island whenever they went away in 1927 and 1928. I did not tell Benny Shandlow back in 1927 or 1928 that "you have got to stay here in my market, I have got you by the neck," or anything like that. I did not tell Henry B. Wolfson in 1927 or 1928 that the market men are in an association and from today on you must kill in Coney Island and no other place, or anything like that. I never discussed a future increase in price with Abe Aaronson or Joseph Scull or any other market man in Coney Island within the past three months. I never made any statement that "tomorrow the price ought to be 34 cents or 32 cents," and no statement like that was ever made to me.

[fol. 919] LEW LIPKIN, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I have been employed by Morris Gerber, Inc. since March 1929 as a bookkeeper and collector. I know a butcher named Sam Bernklau. He was not charged any fixed or standard prices. During the year 1931 up to September 18th we charged him four and five cents a pound and six cents and seven cents a pound above the wholesale market. There was an increase in price on September 19, 1931. There was a five and one-half cent net figure above the cost price that was charged to him commencing that day. It didn't continue steadily, it ran probably for about two or three weeks and then the following week we charged him back again four cents or probably to six cents. I have the records of our firm showing the amount our firm paid for poultry on September 18th and during that week. We

paid 27 cents for fowl, and we charged Mr. Bernklau 34 cents. There was a penny and a half rebate given to him. I did not tell any butcher at any time that during September of 1931 it didn't make any difference where they bought because Gerber's market would get their profit. There is no truth to any such statement. All of his money goes through my hands as bookkeeper, and I would know if Gerber's business gets any payments by other market men. Gerber did not pay any profit to any market men through me, and I would know of it.

I know a butcher by the name of Rosenbloom. I did not tell him or any one else on September 19th that there was a combination and that prices throughout the City were to be uniform. There was no combination in New York City or any agreement that the price of poultry was to be uniform—not to my knowledge. I did not tell Rosenbloom that there were offices downtown at which accountants check up the prices all over the city and that the market men were telephoned to every day and were told what prices to charge. I did not make that statement to anybody. So far as I know it is not a fact that accountants come in to check up our books to find out the prices we charged and [fol. 920] that we received telephone calls every day, telling us the prices to charge. I did not tell that Gerber had orders not to sell any cheaper than the prices at which he was selling, and I did not know of any orders to Gerber or anyone else.

I keep records showing the amount of each class of poultry that we sell and the prices that we receive. We do not charge all butchers the same price. The price is determined this way. If a customer is very particular and tries to get hold of poultry that will be considered the cream of the lot and pick out the best quality of that coop, and in spite of the fact that he used a small quan-ity of it, the other part would have to go out and be sold at a smaller price in order to get it out of stock. So, of course, if a butcher would use quantity and wouldn't be so particular, we would have to charge him a penny or two less whereas if a butcher would be very particular and take the cream of the lot we would have to charge him another penny or two in order to get a better average for our poultry. I have a record showing the average prices we paid for poultry and the average price at which we sold, and the average gross

profit. (Witness produces book.) This book is all in my handwriting and is kept in the regular order of business. The figures in the first column indicate the amount of poundage sold. The next item is the amount of money for which the poundage was sold. That is so for each day during the week. These are purchases during that week and the price that we paid, and the amount. That is all there throughout the entire book. I made a compilation at the end of each week showing our total sales and the cost of the goods sold so as to determine our gross profit.

For the week ending September 18, 1931 there was a gross profit of two and thr-quarter cents per pound.

Mr. Kaufman: I offer in evidence this page dated September 18th, 1931.

(Received and marked Defendants' Exhibit J.)

The Witness: For the week ending September 25th, I made the same kind of a record showing five cents gross profit, per pound.

Mr. Kaufman: I offer that page.

(Received and marked Defendants' Exhibit K.)

[fol. 921] The Witness: For the week ending October 2nd, 1931, the gross average profit was three and a half cents per pound; for the week ending October 9th, three and three-quarter cents per pound; for the week ending October 16th, 2 and ¾ cents per pound; for the week ending October 25th, 2¼ cents; for the week ending October 30th, 2 cents per pound; for the week ending November 6th, 1931, 2½ cents per pound; for the week ending November 13th, 1931, 2 cents per pound; for the week ending November 20th 2½ cents per pound, and for the week ending November 27th, 1931, 1 and ¾ cents per pound.

Mr. Kaufman: I offer in evidence as one exhibit statements from October 2, 1931, to November 27th, 1931, inclusive.

(Received and marked Defendants' Exhibit L, consisting of nine sheets.)

The Witness: I kept similar records for the week ending September 4th and September 11th as I did for the week ending September 18th. The gross profit during the week

ending September 4th was 2 and ¾ cents a pound, and for the week ending September 11th, 2 and ¾ cents.

Mr. Kaufman: I offer in evidence those two pages as one exhibit for the weeks ending September 4th and September 11th.

(Marked Defendants' Exhibit M, consisting of two pages.)

The Witness: This profit that I have just testified about includes the shrinkage and out of that gross profit comes the cost of all items in connection with operating the business. Rosh Hashonna holidays lasting two days came during the week ending September 18th, 1931, and Yom Kippur was during the week commencing September 19th. That is a fast day, and the next day we can start eating chicken.

Cross-examination.

By Mr. Rice:

The Witness: I have recorded a gross profit of 5 cents per pound. Out of that has been taken an amount allowed for shrinkage. The total sales for the week ending September 25th were 57,944 pounds, and the total purchases 60,258 pounds. The difference between the sales and the purchases would be in stock and if the stock was not pres- [fol. 922] ent or was not on hand that would automatically involve shrinkage. That week we sold poultry aggregating $17,171.12 and paid for that poultry $14,183.86. The gross earnings is the difference between those figures, $2,987.26. Our total expenditures were for the week ending September 25th, $1,259.01; for the week ending September 11, 1931, $1,350.26; for the week ending August 28, $1,131.11, and for the week ending September 4, $1,163.85. From July on to September 1931 our expenses were always more than $1000 a week. For the week ending September 4, we sold 37,488, and for the week ending September 11, 1931, $53,979. For the week ending September 25, 1931, after taking account of shrinkage, we still have a gross margin of profit of 5 cents as compared with the gross margin of profit of 2 and ¾ cents for the week ending September 4th. Our expenses for the week ending September 4th were $1,163.85 as compared with expenses of $1,259.01 for the week ending September 25th.

[fol. 923] ABRAHAM HARRISON, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a marketman and one of the defendants in this case. I was one of the defendants in the criminal case, but I was not convicted. I am in business in Coney Island with my brother, Samuel Harrison.

I know Sam Bernklau; he is president of some retail butchers organization over there. During the fall of this year, Bernklau demanded that I go to a meeting of butchers over in Brooklyn at the synagogue. It was called for a Wednesday, and he said to me, "If you don't attend this meeting, you will be boycotted on Thursday morning," and if there is anything that a poultry dealer or a marketman is afraid of, it is a boycott on Thursday morning, because we do more business on Thursday than we do on any other single day, and naturally as we handle perishable merchandise we cannot keep it on hand, a demand like that is enough to scare us to go anywhere. There must have been 35 or 40 people of the trade present, all butchers, except Gerber and Scull and myself. We were the only three marketmen at that meeting.

When I got there, Mr. Bernklau says the body and himself would request that we make a price with them on the merchandise. This was about a half hour after he was speaking along different lines, so I says, "for one, I am not here to make any kind of price with any kind of a body." He says, "We demand poultry off of you for 5 cents a pound and we want to kill the poultry straight." So I said, "That would be a blessing from Heaven and any man that finds himself in this room tonight here is more than welcome to come into my place of business tomorrow morning," I said, "and gladly take all the poultry he wishes for the price that I am offered here tonight."

I said, "That goes for myself and I don't know how anybody else feels about it."

After he saw he won a victory, I said to him, "are you [fol. 924] speaking for yourself or are you speaking for the

body? So far, I haven't heard anybody but yourself," and I said, "It would be pleasant to my ears if I did hear the same expression from everybody there, because that would be an undreamed-of profit to receive, to kill merchandise straight as it comes."

He said, "The body will not come up and talk. I am requested to act for them and what I say goes." So I says again to him, "You may all come into my place of business tomorrow morning and get all the poultry you wish for the price you have mentioned." When he saw he had such an easy victory of it, he started to draw back and talk along different lines, agreeing on a certain price today and another price next day. I said, "I am not here to agree to any prices of any nature whatsoever, but I am merely here at your request, at your demand and giving you everything that you are asking for for yourself and for the body."

With that I got up and left, and the next morning nobody that was in that room took advantage of the price offered, but they came in and mauled up the merchandise, as they usually do.

The way Bernklau and the butchers that were present at this meeting buy their poultry, is to pick a few head out of the coop and leave us about two-thirds of the coop, that we have to sacrifice for almost 50 per cent of our cost price.

At that meeting Bernklau suggested that the butchers should begin to kill straight the same as the chicken dealers. I made no mention of any Exchange in regard to prices. Nobody operates my business but myself and nobody tells me what prices to charge. I did not tell anybody what prices we are going to charge for poultry, only my brother, who is my partner.

I know a marketman by the name of Abe Litwack; he is the proprietor, I believe, of King's Poultry. I never told him in words or substance what he should charge. I had no talk with him. There was no agreement amongst the marketmen in Coney Island or in Borough Park, around the holidays to charge certain prices for poultry, to my knowledge. I did not have any arrangement or understanding with anybody as to what I should charge for poul- [fol. 925] try that I was selling.

I am a member of The Live Poultry Slaughterhouse Association. I believe it is within the past three months or

four months that I joined. The meeting at which I joined was at the Broadway Central hotel. The speakers were Skloot, Winkler, Mr. Charles H. Tuttle, Mintzer, and Mr. Rogers. I cannot tell the substance of the talk that Mr. Tuttle, Mr. Mintzer and Mr. Rogers made at that meeting because I don't hear very well. I did not get very much of it, only what I could pick up here and there after the meeting from hearsay.

[fol. 926] JOSEPH SCULL, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a defendant in this action, and I was one of the defendants who were convicted in the criminal case. I was fined $1000, which I borrowed from the New Jersey Coop Company and paid back to it. I am a marketman in Coney Island Section. I sold Sam Berklau during the year 1931, maybe three or four times. He requested that I attend a meeting of butchers in Brooklyn some time during the fall of 1931 and I did. There were about 30 to 35 butchers of Brighton Beach and Coney Island, and three marketmen, Mr. Gerber, Mr. Harrison and myself.

When Mr. Bernklau asked me, he came with three other butchers of Brighton Beach, a man by the name of Sam Reuben, Izzie Sager and a butcher from 151 West End Avenue, Max —— I cannot just think of his name—and he asked me to attend the meeting that was taking place that night in Coney Island, and I said to him, "What does it mean, another strike" Because about three weeks previous to that, they declared a lockout, without calling me to their meeting, and none of their butchers showed up on the following Tuesday morning. None of my butchers showed up and I went to Mr. Bernklau and Max and this other party and I asked why they did not show up, and they told me because I was selling retail for the same price as I was selling wholesale, and that the customers of the retail stores that were buying meat from them were buying the poultry

from me and that they were losing the business, so I thought it best to attend this meeting. When I got up to that meeting, I found Mr. Harrison and Mr. Gerber there. I did not ask anything and they thanked us for coming. Mr. Bernklau acted as spokesman and he says to us—he did not mention any names—he says, "Now, listen, gentlemen," "We have been hurt and are being hurt by the marketmen. You charge us 30 cents a pound or 32 or 28 cents a pound and you charge the chicken dealer 20 cents and 22 cents a pound; the chicken dealer is operating under a three or four cent profit on account of the quantity they are selling, and they sell it for 26 cents and 25 cents and we have to pay [fol. 927] you 28 and we are absolutely doing no business and we are being ruined."

I said, "What is your proposition?" He says, "We want a 'straight' kill." I says, "You can have it tomorrow morning."

He says, "What do you want?" I says, "It is not a question of what I want," I said, "What do you want to pay?" He says, "We will pay you five cents a pound." I said, "You can start right in tomorrow morning," I said, "that is providing you will all kill a straight kill and that I would not have any broken stuff left at all." He says to me, "there may be several that would not want a straight kill, because they only handle fine merchandise. You can give those few the straight kill or let them select their stuff and whatever you have left, we will have a committee appointed and we will take the balance away from you," he says, "either Tuesday or Wednesday or Thursday morning, we will clean you out." With that understanding, we went away.

When the butcher comes into my place, we open up a coop that he selects. We have made a stack of seven or eight feet high. He will go through the stack, take a look at them, take a piece of chalk and marks it; he gets in there about a half hour or hour earlier, before killing time and selects a certain coop that he wants. A man goes to that coop, opens it up and he pulls out three or four at a time and he gives it to me, and I handle that poultry. Whatever I think is passable as first grade, that I think this man can use, I hand it to this man, and he re-examines it, and if he thinks he can use it, he gives it to the shochet.

If he sees he cannot use it, he gives it to me again, I have an empty coop and I put it into that empty coop. A chicken dealer comes along—after I am through killing for half a dozen or a dozen butchers, out of this stock that is left, I sell to the chicken dealer.

In other words, the chicken dealer comes along and picks up the dregs that the butchers leave. The price that we charge the chicken dealer is different than the price we charge the butcher. The average price that I sold the poultry to butchers during September, 1931, was 5, 6 and 7 cents a pound, over the market quotation, which are the prices at [fol. 928] which I and marketmen buy at West Washington Market. During the month of September, 1931, there was an increase in price that I charged to butchers. That was during the holidays. The selling commencing about the 13th or 14th of September and continuing for about four weeks from that date. During that period the price that I charged over the Washington Market quotations was about seven cents. It went up from 2½ to 7 cents. Some customers only paid me 2½; then they paid me 4 for the holidays or 1½ cents more. I sold to chicken dealers all during the year regular stuff from 2½ to 3 cents and broken stuff for as low as 5 and 6 cents below what I paid for it. There was no organization of marketmen in Coney Island or Borough Park during the year 1931. I am not a member of any organization in Coney Island or in Borough Park. I have recently become a member of The Live Poultry Slaughterers that had its first meeting on or about August 6th, at the Broadway Central Hotel, which I attended. That was the meeting concerning which the last witness testified that Mr. Tuttle, Mr. Mintzler, Mr. Rogers, Mr. Skloot and Mr. Winkler addressed the meeting. During the talks at that meeting, the shrinkage question was brought up, the cull question was brought up, and the weight. On the question of shrinkage, when a car is entered into the New York market from a shipping point that comes into a railroad terminal at about seven or eight o'clock, or the night before, the shipper notifies the men that come in with that car, whether that car will be unloaded the following day or not. If it is to be unloaded the following day, the car man is to get that car ready, and he starts to feed up that poultry, to get as much weight as he possibly can, and when he feeds that

poultry up, he tries to get it within the limit of an average that would pass a certain inspection that they allow, either 3.10 or 2 pounds for whatever bird that might be in there, and they try to get it to that average, but it was brought out that we objected to the feeding of poultry on the day of unloading.

The question of weight was, when the commission man sends his man over there to weigh out a car, and he weighs, [fol. 929] for instance, a car, and they ask the car man how heavy it is, and he says, for instance "I have about 18,000" so they know just about how many cars to weigh up. On 18,000 they will weigh up maybe 100 cars, and they weigh these 100 cars at one time, that is one at a time and stick them up on the platform and in order to hold them cheaper, they try to give him as good a weight as they possibly can, and they grab a pound, two or three pounds on what we call the tare, that is, the empty coop, and we objected, as far as the weight is concerned, that is on the tare. On the tare, they weighed less—but when they weigh the gross, they add on another pound or two, which means we have before we ever put that coop on our truck five pound shrinkage right there.

As far as the cull question was concerned, they would not allow us to go through the coops when they brought them out of the cars to pick out the culls. A cull is a bird that looks as though it would weigh about five pounds, but it will only weigh about two; it is nothing but the frame. They charge us 30 cents a pound and we have to sell it as low as five cents a pound. My books and records—I haven't them here—will show that not only myself but other dealers are in the same position as I am.

At that meeting it was taken up by Mr. Tuttle and Mr. Mintzer who said that we have a perfect right, and they were going down to Washington, and submit to the Department of Agriculture these facts, and the secretary of the meeting drew up some papers and gave them to them, and they went down to Washington with them.

That is all that was discussed at that first meeting, the question of shrinkage, weights and culls, and a resolution was prepared and Mr. Tuttle and Mr. Mintzer said they were going to Washington with respect to it.

There was another meeting several weeks later, quite a number of marketmen were present. Mr. Mintzer was

there, but I don't think Mr. Tuttle was. The subject under discussion was organizing for a credit association. At the first meeting, when I became a member of that slaughter- [fol. 930] ers organization, they solicited memberships. At this second meeting of the marketmen, they claimed that they were having too many losses on butchers and chicken dealers. If a butcher would come into my place, and he was my customer and was falling back in the payment of his bill and I would not go any further with him, he would go to another marketman, and the second marketman, knowing that he was with me for a year or two years and thinking that if he was good enough for me for credit, they would not even call me up or notify me, they would sell him, knowink that he was with me and he would probably stay there a while and fall back in his payments of his bills and then go to a third marketman.

Some of them chicken dealers and butchers would be closing up and owing money to everybody, and they said it was time we came to our senses and formed some kind of a credit association. The discussion was that if a butcher came into my place, not knowing where he came from, I could call up this Credit Bureau and ask Mr. So and So that this man, whoever he was, was here and wants to buy some poultry, and I would say, "Have you any information on him?" If he had, he would give me that information and I was to use my judgment whether I wanted to give him merchandise on credit or sell for cash. There are no reports that we can get. I do not know of any bureau from which we can get any information with respect to the butchers or chicken dealers. The losses by marketmen on credit have been quite great this year. I have had enough to put me out of business. My credit losses this year are about $7000. For 1930 they were maybe $2000—$2500, around that approximately. As a result of those losses I am closed; I have had a meeting of creditors. There was a boycott by the butchers in Coney Island against me about two weeks before this meeting in the synagogue. For one day they did not come in to kill any poultry. I don't know where they bought it. I have no means of stopping anybody from getting poultry. There is no association other than this Tuttle organization that I testified about before, between marketmen in Coney Island and marketmen in other parts of the City of New York that I know of. I

[fol. 931] have never heard of any discussion between marketmen as to the prices that they should sell poultry for.

Cross-examination.

By Mr. Rice:

The Witness: I have heard discussion of prices among marketmen in 1927 and 1928. I don't know about 1929. I was a member of the Greater New York Live Poultry Chamber of Commerce. I was not one of the directors, and I do not know of any from Coney Island. I don't think I attended one meeting. The place where I heard price discussions in 1927, 1928 and 1929 was at The West Washington Market, among different marketmen. Those discussions were about what they would take for their merchandise. I don't know whether they agreed. For instance, the market would be 27 cents and I would hear a marketman say, "I am going to take 32 cents tomorrow for my poultry," maybe 33, maybe 34—I don't know. I just give you that as a figure of what I had heard.

I know Abe Newman and Moe Rosenstein. I don't know a chicken Moe. I don't know whether they were employed by the Chamber of — for Coney Island. I saw them in Coney Island, but I did not see them transact any business there. I did not see them chase butchers or dealers around. They never brought any customers back to me from New Jersey. I did not send them for customers, nor did I ever report any facts to them at all; they did not report to me. I do not know who they did work for. I know Harry Mornick, a butcher. He bought from me in 1927 or 1928, but he did not pay for it yet. I think I got a judgment against him. I never told him in 1927 or 1928 that he would have to buy poultry from me, and if he did not buy from me, that he would have to pay me for it anyhow. I never told him that or anything like that. I understood that he got poultry wherever he wanted, because he did not kill from me for maybe six weeks or eight weeks. I never sent anybody out to follow him and do not know that he was followed. I never told him that all the marketmen were together and that he would have to buy from me. Murray Rosenstein never brought back Mornick to my market.
[fol. 932] I know Bennie Sandler. I never told him in 1927 or 1928 that he must buy poultry in Coney Island

from Morris Gerber and I never refused to sell him. I think I sold him in 1927. I never followed Samuel Soslosky and never engaged a taxicab to follow him. I never told Henry Wolfson that he must buy his poultry from Morris Gerber, or that he must pay nine cents above the market. I had a litigation with him for $1000 and took judgment against him. Wolfson bought from me at one time but I never told him that he was assigned to me and that he would have to buy from me. I never told Wolfson that I had bought out the Government, or that the Chamber of Commerce had bought out the Government or any Government official.

At this meeting of the Live Poultry Slaughterhouse Association, the secretary George Skloot prepared a program. I saw the program after it was presented to Mr. Tuttle. I think Exhibit 10 for identification is the program that I saw. It was not discussed or submitted in the meeting. This was the Broadway Central meeting. I know the secretary prepared it because he told me and showed it to me, but did not ask my approval of it. I don't know whether he showed it to other marketmen. When he showed it to me, he said that this is a copy that Mr. Tuttle and Mr. Mintzer said that it is the finest thing he could get up and it was something wonderful that he could work on. After this meeting they discussed shrinkage and short weights and culls. They did not discuss the fact that there were too many slaughterhouses. They didn't discuss overlapping of delivery expenses at the meeting. There might have been one or two marketmen that spoke amongst themselves. I heard some talk about it. I don't remember just who. It was different talks, just like when one marketman gets talking with another. They did not discuss competitive bidding and the elimination of competitive bidding.

The program prepared by George Skloot contains a provision calling for the elimination of competitive bidding. It was not discussed at the meeting, and I did not hear it discussed by any marketmen. Mr. Skloot did not discuss it with me.

[fol. 933] At this meeting of butchers when Mr. Bernklau complained that the chicken dealers were paying less than the butchers, there were no prices mentioned. I mentioned prices in my direct testimony according to what he said; there was a difference of 10 or 12 cents a pound. I was

charging the butchers 10 to 12 cents more than the chicken dealers, but that was a different quality, on the broken stuff, not on the regular stuff. At the time the butchers boycotted me a couple of weeks before that meeting, I had not increased the price of poultry nor had my competitors. I have never sold at 10 to 12 cents above the market as long as I have been in business, and I am in business 26 years.

Direct examination.

By Mr. Kaufman:

The Witness: I understand by the phrase "Elimination of competitive bidding" if two or three marketmen get together and buy a quantity—if I needed 15 crates and the other fellow needed 15, and the other fellow needed 20, that he could go out and buy 50 coops cheaper than I could by buying only 15. They pool together their purchases to eliminate the small buyer each one of whom bids for a small lot. Where a commission man, if he knew he could sell a car to one buyer instead of peddling it out to seven or eight customers, he would let it go out, even if it was a cent or two cents less.

Recross-examination.

By Mr. Rice:

The Witness: That was not discussed at the meeting. That is my own personal understanding of it. I have discussed that with other marketmen, in West Washington Market after this meeting. I did not discuss it with a great number of marketmen or with Skloot. I discussed it with Morris Gerber and Louis Winkler from Borough Park. We did pool and we bought together and divided it there at the car. I did not understand that there was a plan originally with the Live Poultry Slaughterhouse Association to pool all of the purchasing of the marketmen and buy through a common agency. That was never discussed in my presence.

[fol. 934] SAM ENGLISH, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a marketman doing business as Berkshire Live Poultry, Inc., in Brooklyn, Borough Park section. I am not a defendant in this case, and I was not a defendant in the criminal case either. I know a butcher named Morris Cooper. Once I sold him in June of 1931 and in September 1931, during the Jewish holidays. I don't remember exactly how much I charged him, but I charged him about 5 cents above the market. I never charged him 10 to 12 cents above market quotations. I had no talk with Cooper around the Jewish Holiday in which I told him that I made so much money by reason of my having increased the prices that I was able to buy up all the tickets in the synagogue. I bought two tickets, for me and my wife. I do not know of any agreement among marketmen to charge a fixed price for poultry. I am a member of The Slaughterhouse Association something they call it. It is a retail association. I have been a member of that about two months. They had that meeting at the Broadway Central Hotel. I did not see Mr. Tuttle but I was there at the meeting. I went away; I stayed there only about a half hour and I went away.

[fol. 935] BENJAMIN ROSENBLUM, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a marketman and the name of my firm is Public Live Poultry Market, located in Brooklyn. I am not a defendant in this case, and I was not a defendant in the criminal case. I have been in the poultry business not quite five years. I know a butcher named Samuel Fried. I have sold poultry to him off and on, including some time in September of this year. I charged him above the market price anywhere from four to six or seven cents, top. I never charged him over seven cents and never re-

fused to sell him poultry. I had a conversation with Fried about his not buying poultry from me. He called me up for an order; I sent him an order, and when the driver delivered the order, he said, "Wait a minute, I want to look at this poultry." They he said, "I don't want it. That poultry is not fat enough. In Jewish they say, 'hot fat poultry.'"—he says, "If it is not hot fat I don't want it; extra fat poultry I want." So the driver brings it back. I called back Mr. Fried, and I spoke to him and he said, "I am sorry I started to deal with a damned Gillig like you." I don't know what a Gillig means, but that is what he said, a "damned Gillig." Mr. Fried then called me up and sent me an order and I said, "No, I won't send you the order. You come down and kill it yourself. I sent you an order yesterday, and you took it back." I did not tell him in words or substance that he would have to go back to the Atlantic Poultry Company and buy his poultry.

I do not know of any agreement or combination amongst marketmen in Brooklyn or anywhere in the city. I do not know of any agreement or combination of marketmen to fix prices on poultry or allocate customers. I am a member of The Poultry Slaughterers. I have been to no meetings at all. Since our organization there has been an arrangement made with the Receivers as a result of which marketmen are permitted to cull poultry in a car. Up to four days [fol. 936] ago, we were not allowed to pull anything from the coops, such as sick poultry, unfit poultry to eat, but the last couple of days—two days ago we were allowed to cull and I pulled once about 400 pounds of culls out of two loads of poultry. That is about two coops. That means that I can afford to sell my poultry cheaper and also make a profit. I don't know by whom was that arrangement made with the Receivers. I don't go to the market to do the buying, my brother-in-law buys and I just heard what he tells me. I have a ticket to show that he pulled that many culls. I have had credit losses in Borough Park this year of about $3000. There is no credit organization in Borough Park. Before this arrangement was made so that marketmen could cull poultry in a car, I would estimate the loss to the marketmen as a result of not being able to cull poultry between $100 and $150 a week, which we killed that poultry as unfit to eat. We killed it, put disinfectant on it, and threw it away. That is the only reason that I joined this association.

Cross-examination.

By Mr. Rice:

Mr. Rice: If your Honor please, the Government has never contended in this case that the Live Poultry Slaughterhouse Association, advised by Charles Tuttle and George Mintzer, has been formed for illegal purposes. It is willing to concede that that organization has entered upon a plan for eliminating culls and for obtaining fair rates at the railroad terminals and to eliminate other recognized abuses in the poultry industry. The Government commends the organization for those legal activities. However, we do maintain that upon the formation of that organization, there was a tendency and an attempt on the part of many of the market men who are members of that association to re-create the old conspiracy and to perfect it into an organization that might be used for the purposes of restraining trade.

There has never been any intention whatever on our part to reflect on Mr. Tuttle or on Mr. Mintzer or upon the organization, as such. I thought that was perfectly clear from the testimony that we had offered.

The Witness: I have been in the poultry business not quite five years since around 1927. I have never heard of a combination among market men to fix prices or allocate customers, not even four years ago. When Mr. Fried came to my place of business in September 1931, I did not know where he had been dealing. I did not know that he had dealt with the Public Live Poultry Company and I did not [fol. 937] send him back there. I didn't tell him to go back where he belonged. I am positive that I have never heard of any combination among marketmen to fix prices and to divide customers.

[fol. 938] Abraham Brookstein, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am in the live poultry business in the Borough Park section. I know a butcher by the name of

Maurice Cooper. Last year, 1930, he bought from me about two weeks but not during the year 1931. I did not talk to him in the last couple of weeks and ask him to become a customer of mine. I asked his partner, because his partner was buying of me 10 or 12 years. He had a store for himself then; he closed up his store and then went in partnership with Cooper. Mr. Cooper bought of me two weeks when he gave me a check and the check came back and I had trouble with the check, so next week he kept buying until Tuesday or Wednesday, until I collected my check. I gave him stuff until I was in about $60, so I thought I had better lose the $60 before I lose $350. After I collected that check I refused to give him poultry. I told him, "If you give me cash, I will give you poultry." I had no talk with him in which I asked him to become a customer of mine or told him that a combination was being formed and that if he became my customer I would treat him right. I never had any such talk with his partner or with anybody. I never told Cooper or his partner or anyone else that the break-up of the combination would not last long and that a new combination would soon be formed. I never mentioned any combination, because I do not belong to any combination. I do not know of any agreement amongst marketmen anywhere to fix prices or to keep customers in particular places. I am a member of The Slaughterhouse organization that Mr. Mintzer and Mr. Tuttle are interested in. I joined it two months or more ago. It is the only organization I ever belonged to.

I have had many credit losses with my butchers. This year I must have $1200 or $1600 losses. I am very careful [fol. 939] who I sell to. I have not attended any meetings of marketmen in my section or in the City of New York. I came once to the meeting of Tuttle and I saw a lot of people there, and I am a sick man, so I thought I would not be able to sit so late, and I went right back. I have not had any meeting with anybody in New York or in my own section for the purpose of agreeing on prices at which poultry was to be sold. The first thing I don't interfere with anybody. I am in business for the last 26 years in one place, and I do business with myself. Nobody interferes with me. My competitors are trying to take away customers once in a while from me, but I cannot blame them and I don't interfere with anybody. I try to take away

other fellows' customers. Nobody stops me from taking away customers and nobody stops them from getting my customers. I take away today a few customers and I will try next week again.

Cross-examination.

By Mr. Rice:

The Witness: In September and October 1931 I charged between 5 and 7 cents above market quotations but I did not get even 5, because after the holidays they stopped paying the bills, and they took off over $400 and I can prove it by the books. They said if I didn't they would not pay the bills; they would go to court. They said I was charging ten cents on the pound but I did not charge even five cents.

Redirect examination.

By Mr. Kaufman:

The Witness: The highest price I charged was between 5, 6 and 7, but even when they paid me five, they even took off a cent a pound. They would not give it to me. They deducted two cents on a pound—more than two cents and I can prove it with the books.

Recross-examination.

By Mr. Rice:

The Witness: I had no conversation at all with Maurice Cooper about two weeks ago. I talked with his partner, J. Spiegelman. I told him to come up and buy of me stuff. I did not see why I should lose an old customer as long as he is coming for the stuff, why he should not buy from me. I did not tell him that there would be a new combination to divide customers as they used to do. I never did. He even asked me what I would charge if he comes to me and [fol. 940] I said I will charge the lowest price as I always did; he was dealing with me long enough, and he can take my word. There was not an agreement that they would divide customers. I didn't talk to anybody; I didn't hear anybody talk about these things that there was going to be any agreement.

A plan among the marketmen whereby they were not going to sell to each other's customers unless they pre-

sented receipted bills from their old customers was talked about when we went together with Tuttle; we should make a credit system. I didn't talk about it; I heard that people were talking about it. I heard they wanted to make a credit system, in case a butcher comes in and don't pay the next man the bill, he cannot sell no stuff. I heard that in the market. I could not remember who it was I talked to. I talked only to one. He did not say the plan. He said that would be the best thing we should have a credit system that we should be sure of our money. He didn't say it was going to be. I didn't hear talk of that all over town. I very seldom go to the market, because I am most of the time home, I am a sick man. I heard talk only once at the market about a credit association whereby marketmen would not sell to anybody who could not present a receipted bill, but I don't know who I heard it from.

[fol. 941] HARRY SEWALD, called as a witness on behalf of the defendants, being fiust duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am in the live poultry business and operate as Majestic Live Poultry. I am not a defendant in this case and was not a defendant in the criminal case. I have been in the poultry business altogether nine years, a year and a half in Borough Park. When Abraham Aaron came in to my place, he came to me on a Wednesday morning and he wanted some turkeys. I did not have any turkeys, and I could not sell them, so he said "Why don't you want to sell me poultry?" So I said, "I will sell you any kind of poultry you want except turkeys, but only for cash." He went away and came in the next day, Thursday morning, and I gave him poultry, amounting to $71.10, and I charged it to him as a cash sale, he paid me and he went home. The next time he came in on Monday and he told me he is going to court, and the amount of his bill which he paid was $17.88 and since then I did not see him. This is the slip that I made out in connection with that sale, $71.10. This cash sale was on the 26th of November, about ten days ago, Thanksgiving Day. I sold him the following Monday

morning for cash; that is the slip (document handed to the witness), that I made out for the cash sale. That is 63½ pounds of fowl at 28 cents a pound. Then he said he is going to court today. He showed me a slip that he has to go to this court; that he is going to be a witness for the Government. I did not ask him what he was going to say and he did not tell me. Those are the only two times that I sold Aaron anything. He never came in any more, because I wanted cash from him. I never knew the man before the 25th of November the day before he bought from me, which was the first time he came to my place.

Mr. Kaufman: I offer in evidence sales slips in connection with these two sales of November 26th and November 30th.

(Marked Defendants' Exhibit N and O.)

[fol. 942] The Witness: On the first sale made on November 26th for $71.10 I received a check for that and on November 30th, I got cash. The notation here "rang in the register," is my handwriting. On Thanksgiving Day I did not tell him that if I sold anything to him the union would send me an extra man. I never did tell him anything like that. There was no conversation regarding the union. The union would not send me another man if I sold Aaron. I sell to strange butchers, whoever comes in, for cash I sell. I am a member of the Poultry Slaughterhouse Association referred to here as Mr. Tuttle's organization. Since a year and a half I belong to that association. It used to be called the Retailers, now it is the Poultry Slaughterhouse Association. I was at no meeting. I never attended any meeting. I have retail stores. I am not a member of the organization that Mr. Bernklau is president of. This retail organization that I belonged to was an association of retailers; there were some wholesalers in it too. The name of that organization was the Live Poultry Dealers Protective Association, and that organization became a part of the Poultry Slaughterers' Organization this year.

I have never heard of any agreement amongst marketmen in Brooklyn to fix prices or to allocate customers. I have not had any conversation with any marketmen or anyone else relating to fixing prices at which I was to sell poultry. No one interferes with me or tells me the prices at which I should sell poultry. No one interferes with me with respect

to my selling poultry to any butcher or chicken dealer. I have had credit losses this year. I am only a small operator and I had only $1200 losses. One butcher alone stuck me with $700 for merchandise. He gave me a check and the check came back. I had him in jail, but he cannot pay it there. He is on parole now. I never did get paid. I had from $150 to $200, quite a few.

I know a butcher by the name of Harry Rubay. He has been buying from me regularly for about a year. On the 19th of September of this year he had a talk with me. The market was 28 cents that I paid for poultry that day. I did [fol. 943] not charge him 35—I don't remember exactly, I think 33 or 32, and then he did not pay the full amount; he took off $150—$135 for the three holidays. I did not tell him that I expected an Association to be formed and that there would be one price for the whole city. I never told him any such thing. There was no association formed and there was not one price all over the city. After the 21st of September of this year I did not charge him 8 cents a pound above the market quotations until about two weeks ago. I charged him 3 and 4 cents and 5 and 6 for the holidays, which it was the most, then he took off the bill too. I do not know how much the rebate amounted to per pound that he took, but I know it amounted to $135. I tried to collect that but he won't give it to me. I don't ask for it either. He still buys from me.

The Live Poultry Dealers Protective Association had mostly retailers in it and a few wholesalers. I am a small wholesaler but most of my business is retail.

Cross-examination.

By Mr. Rice:

The Witness: That $135 Rubay took off of his bill amounts to about three cents a pound. I still sell Rubay. I give him credit, he is good for the money. I don't bother him about this $135. If I try to collect, he will go away from me. I did not overcharge him. I can not collect it.

When Abraham Aaron came to me for poultry I don't remember where he had been dealing. I raised the price on my poultry during the Jewish holidays this fall a cent or two at the most. Rubay took off three cents from his bill. I charged Rubay in the first instance about five or six cents

before the deduction. I know exactly how much a pound I charged him. I did not raise my prices during the Jewish holidays this spring on the strength of the holidays. I did raise them this fall a cent or two. I had an argument with Rubay about the price of the poultry that I sold him on September 20th or 21st, 1931. I was charging him 5 or 6 cents and not 8 or 9 cents above the market. He complained about the increase in the price. I did not tell him that I would see him next week in my market and that we were [fol. 944] going to form a new association soon. I never said anything about a new association. I never said that there would be all one price among marketmen. I didn't mention any association to him at all. I get for my poultry today above the market 5 or 6 cents. I am charging more than other marketmen. The best poultry I give them. I paid for poultry yesterday 21 cents and sold it today for 26 cents and 27 cents, the same class of poultry, high-grade poultry. I do not know what other men are charging above the market today or yesterday.

Redirect examination.

By Mr. Kaufman:

The Witness: I raised my prices around the holidays in September and October and around the Easter holidays this spring. Every year around the holidays the price of poultry is raised, and there are two important sets of Jewish holidays each year, one around Easter time which comes around April, and then the Rosh Hashonna and Yom Kippur holidays that come some time in September and October.

[fol. 945] BENJAMIN KAPLAN, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a retailer in live poultry in Brooklyn. I am not a defendant in this case and was not one in the criminal case. I know a butcher by the name of David

Scott. He deals with me. Once a week he comes in and cleans me up what is left over from the week. He has been doing this for the last past five or six years. I did not tell him not to buy at my place. I always told him to do me a favor and buy off me because I want to get rid of what I got left over. I have been selling him whenever he came to me and whenever I had the stuff, all of the time. He buys for the past five years. No marketmen ever called me up to tell me not to sell any particular customer or dealer. Nobody is calling me because I don't do any wholesale. The only way others interfere with me is when I sell at 25 cents my neighbors sell at 23 cents. But nobody interferes with me by telling me who to sell or who not to sell to. I do not know of any agreement amongst market men to fix the price of poultry. If there was an agreement I would not be complaining that someone was underselling me.

[fol. 946] WILLIAM SCHENKER, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am working in the chicken market of Benjamin Kaplan the last witness. I know a butcher by the name of David Scott. I did not tell him not to come back there and buy any more. I am a union man and a member of Local 167. I never refused to sell anybody any poultry. When I had it he could have it. I had no conversation with Mr. Scott at all.

Cross-examination.

By Mr. Rice:

The Witness: I sold poultry to Mr. Scott when the boss used to go to the market. I dont' remember if I sold him in September or October this year. I am the only member of Local 167 in Kaplan's market. Kaplan sells per week about 20 coops. I said nothing about doing him a favor and not returning and no one else said that.

[fol. 947] CHARLES PLATZIK, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am in the poultry business and the name of my firm is Johnson Avenue Live Poultry located in the Williamsburg section of Brooklyn. I have been in the business 15 years.

I know a butcher by the name of David Scott. He bought from me during the year 1931, on and off. I never asked David Scott to do me a favor and not buy poultry from me. I do not know where David Scott buys from.

I am a member of the Live Poultry Slaughterhouse Association. I joined at the time Mr. Tuttle made the speech around August 6, 1931. Before that I was not a member of any organization. I am not a defendant in this case and was not one in the criminal case. I do not know of any agreements or any understandings amongst market men as a result of which attempt is made to fix the price of poultry. I never refused to sell poultry to any butcher or chicken dealers and I never called up any market men to report to them that chicken dealers or butchers left me as customers. I have had credit losses this year of about $1500. Last year they were about $3000. I don't know of any agreement to fix the price or to allocate customers. I did not hear any talk amongst market men at any time during the last couple of years about the handling of customers as to where they should buy or to whom market men should sell, or the fixing of prices. No one tells me the prices at which I should sell poultry, or to whom I should sell or not sell.

Cross-examination.

By Mr. Rice:

The Witness: I have been sitting in court here during all of this testimony this afternoon and have heard the testi- [fol. 948] mony of all of the other witnesses.

Mr. Rice: If your Honor please, may I ask that all witnesses be kept out of the courtroom prior to the time that they testify?

The Court: That request should have been made ~~at the~~ opening of the case because it should be equally applicable to the two sides.

Mr. Kaufman: I have no objection your Honor, to excluding the witnesses at all.

The Court: All of them go out, all those that have not testified, go out.

The Witness: I had partners in my market, Max Ginsberg and Michael G. Debare. There are no other people at that place. We sell a week about 18,000 pounds, about 90 coops. We have two working men and two schochtim. We pay them $50 a week each. We do a wholesale business. I did pay them $65 but times were bad and I took them off $15. The only conversation I had with David Scott is if he came [fol. 949] in to buy merchandise. I never told him not to come back and buy or that there was a new combination or that the market men had gotten together again. I did not tell David Scott to tell no one that I had sold poultry to him.

Redirect examination.

By Mr. Kaufman:

The Witness: There is no combination of marketmen that I know of. I am referred to in my place as "Charlie the boss."

[fol. 950] Abe Rosenberg, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I have been in the poultry business as a marketman about 4 years and my firm is The Beadle Live Poultry.

I know a butcher by the name of David Scott. He bought from me during the year 1931 most of the time and now too. I had no difficulty or trouble with David Scott during the last couple of months. I have been charging him above the market quotations between four and five cents. He

never paid less than three. My partners in the Beadle Live Poultry Market are David Wagshul and Harry Herbert, brother of Charlie Herbert. I did not tell David Scott a couple of months ago or a couple of weeks ago that the market men were getting organized and he would have to pay an extra cent a pound. I don't know that there were times during the year 1931 when he didn't buy from me but bought from other markets, the Johnson Avenue Live Poultry and Benny Kaplan. I did not call up either of those markets and tell them not to sell stuff to David Scott at no time. I don't know if anybody interfered with the persons to whom I sold poultry. The only interference is someone who undersells me and sometimes I undersell other people, but there is no one who tells me to whom I can sell and to whom I cannot sell. I do not know of any agreement amongst market men or anyone else to fix prices or to tell butchers from what market they can buy. I do not belong to any associations. I have not had any meetings with market men at which I agreed on the prices that I would sell poultry. I am not a defendant in this case and was not one in the criminal case.

Cross-examination.

By Mr. Rice:

The Witness: I am a partner of Harry Herbert since we are in business about three and a half years, I think 1928. Harry Herbert was a defendant in the criminal case. I didn't know he was convicted. He wasn't. I have not heard of price-fixing among the poultry marketmen or of dividing up customers or of collecting one cent a pound.

[fol. 951] Redirect examination.

By Mr. Kaufman:

Q. When you say that Harry Herbert was not convicted, do you mean that he did not go to jail? Do you know whether he paid a fine?

A. He didn't go to jail, I don't know what—to answer you I don't know.

Q. Do you know what convicted means?

A. Yes, sir.

Q. Do you understand what convicted means?

A. Sure.
Q. Do you know what found guilty means?
A. Yes, I know what the jury did with respect to Harry Herbert.

By the Court:

Q. What?

By Mr. Kaufman:

Q. What did they do?
A. They didn't find him guilty, not guilty.

By the Court:

Q. That is what he said.

By Mr. Kaufman:

Q. You say the jury didn't find him guilty?

The Court: Keep your eyes away from back there (indicating to the end of the courtroom).

A. He was found guilty. He did not go to jail and was not fined.

[fol. 952] Louis Hoffman, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: My business is live poultry. My firm is Hoffman Brothers Poultry, located in Williamsburg section in Brooklyn.

I know a butcher by the name of Louis Kuglar. He bought poultry from me pretty near about a year ago for a week or two. When he came I sold him. I never told him that I would not sell him any poultry. He is a butcher down on the east side of Manhattan, and went over to Brooklyn for his poultry. After a week or two he stopped coming to me, and since that time he has not been back to me to buy poultry. I never told him that Weidberg called me up

and told me I should not sell to him. Weidberg never called me up or told me not to sell to Kuglar. I know who Louis Weidberg is. No one ever told me to whom I should sell and to whom I should not sell. I would not let Weidberg or anyone else interfere with my business. Nobody tried to interfere with my business. I do not know of any agreements amongst market men to fix the price at which I should sell poultry or to determine who is to sell poultry to particular market men. I am not a defendant in this case and was not one in the criminal case. I became a member of the Live Poultry Slaughterhouse Association about six months ago, in the summer of this year. Before that I was not a member of any association. No one has attempted to interfere with me in the selling of poultry to anybody. I have had credit losses this year of about $3000, and about the same last year.

I have five men work in my place and three shochtim, they are all union men, and union schochtim.

Cross-examination.

By Mr. Rice:

The Witness: I was a member of the Chamber of Commerce and I know Samuel Sahn. I never went to Samuel Sahn and with him to Raphael Feldman or any small market man's place. I don't know anyone named Feldman in the live poultry business. I did not go to any market or retail poultry store and look at the charge books in 1927 [fol. 953] or 1928. I never told any poultry dealer or market man that if he sold to butchers he would be stopped from getting poultry in West Washington Market. I never heard Samuel Sahn say that. I never heard of the L. W. Credit Association. I don't know that the market men on the east side organized a credit association in the summer of 1929. I don't know anything about that. I was not aware that the east side market men had organized after the indictment or that Kuglar came to my place of business because of that organization. Kuglar said nothing about that to me.

I know Louis Weidberg. He has never called at my market, sometimes I met him in the West Washington Market. I can't recall talking to him in December of 1929. He never told me to stop selling to Louis Kuglar who belonged to the

east side. I never had any conversation with Louis Weidberg about Kuglar.

Redirect Examination.

By Mr. Kaufman:

The Witness: I sold to butchers or poultry dealers from other sections of New York other than Williamsburg, including the east side, Borough Park and Long Island. Whoever comes into my place I sell. I have been selling butchers from Manhattan, Borough Park and Long Island since I am in business.

Recross-examination.

By Mr. Rice.

The Witness: I know why Louis Kuglar went to my market over in Brooklyn in the summer of 1929 to buy poultry. I sold him for three cents over the market for the pound and he was supposed to kill straight. I don't know what the market men on the east side were charging. From his market on the east side to my market in Williamsburg Kuglar went over the Williamsburg Bridge. He is about four or five blocks on this side of the bridge and I am about four or five blocks on the other side of the bridge. The distance is about two miles. I know there are at least a dozen markets within four or five blocks of Kuglar's market where he could buy poultry.

[fol. 954] ALEXANDER SIEGEL, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: My business is live poultry. My company is H. Rubin Live Poultry, Inc., located in Flatbush Section of Brooklyn. Harry Rubin and Ben Danziger are my associates. I am not a defendant in this case and was not one in the criminal case. None of my partners were defendants in the criminal case.

I know Rubin Weiner a dealer. He doesn't buy now. He bought from me several months ago. He stopped around the holidays, around September. Prior to the holidays he bought from me for about five months. I was charging him above the market quotations between three and five cents. During the holidays I charged him between five and six cents a pound. I raised my price around the holidays, but not from ten to twelve cents a pound above the market quotation. I never charged him any such price. The highest price above the market quotation that I charged him during the holidays was about six cents. When I raised the price to six cents Weiner complained about the increase. He said I was overcharging him. I told him I can't sell for any less because there is bigger expense around the holidays, the expense is bigger around the holidays, the expense is bigger and I have to raise a little. I told him I can't sell for any less. I charged him that price. At the time he bought the merchandise he didn't say that he wouldn't pay it. I told him I was charging him that price. He said it was too much and he wouldn't pay for it and after he got the merchandise he refused to pay and he took off quite an amount from the purchase, around $300. I actually got from him above the market price about a penny or two cents. I never told him that there had been a combination of market men. There was no combination of any market men. I never told him that I had to charge the price of ten to twelve cents above the market because others watched my books; no such thing. No one ever watched or examined my books. I never told him in words or in substance that the market men were all combined and that everyone charged the same price. [fol. 955] I do not know of any agreement amongst market men to fix prices or to allocate customers. I am not a member of any association. No one interferes with my selling to any butcher or tells me to whom I should sell, or not sell, or the prices I should charge for poultry.

Cross-examination.

By Mr. Rice.

Q. Mr. Siegel, did you say that none of your partners were parties to this suit?

A. No, sir.

Q. None of them are defendants here?
A. No, sir.
Q. Isn't Harry Rubin a defendant in this case?

The Court: Don't look away.
By the Court: Is he a defendant in this case?

By Mr. Rice:

Q. Yes?
A. Not that I know of.
Q. Don't you know that he is a defendant in this case?

Mr. Kaufman: If your Honor please——
The Court: Leave the witness alone.

The Witness: I do not know that Harry Rubin is a defendant in this case. I have been in the poultry business in this place for about eight months. I was employed by the Kings Poultry Company before that for about two years. The partners of the Kings Poultry Company at that time were Louis Horowitz, Morris Rosen, David Litvak and Leo Kasoff; that was in Brooklyn. Before that I was in Brownsville, with Dworkin & Bloomenfield, in 1927 and 1928. I was a partner of Dworkin & Bloomenfield at one time. I knew what was going on in that market. I have heard of an agreement among the market men to refuse to sell butchers and poultry dealers who didn't present receipted bills, around 1927 or 1928, but I heard nothing about fixing prices or raising them, or about dividing up customers. I attended the meeting at Gabel's Hall in December, 1927, and I heard nothing about dividing up customers. They were talking to better conditions.

[fol. 956] Louis Schenkman, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: My business is live poultry. I do business as Bath Beach Live Poultry Market in the Bensonhurst section of Brooklyn. I know a butcher by the name of Reuben Weiner. I sold merchandise to him, but not during

the year 1931. He came once to me during 1931 and tried to buy poultry, after the Jewish holidays. I refused to sell him poultry, as that man used to be a customer of mine in 1930 and in 1930 I was doing business—I had two places, one in 16th Avenue and one in 18th Avenue. We are two partners, my brother and myself. My brother was the buyer and I had to take care of both places. I had a manager in the wholesale place and I used to take care myself of the retail poultry. I had a very big shrinkage in my place, and I could not catch anybody, but somebody was stealing from me. I had a suspicion that some employees of mine were stealing poultry and that they were selling it to Wiener, and that Wiener knew that they were stealing from me. I did not know for sure he was stealing, but of one thing I knew, he used to buy poultry and before they stole the poultry, Reuben Wiener used to buy 450 to 500 a week and after I had the big shrinkage, this man came down to 350 and 375 a week. He done the same business as before. He didn't buy nowhere else except from me. That is how I found out that this man used to buy poultry and because the union did not want to give me another man I closed my business up entirely for wholesale. I told Wiener I didn't want him in my place any more. I said I have got enough trade, I wasn't looking for more trade, and I am not looking for more business and I did not want to sell him any more poultry. I did not tell him that I would find out from a meeting of marketmen whether I could sell him. There was no meeting of marketmen at which I was told whom I would sell to.

I am a member of what used to be the retail poultry asso- [fol. 957] ciation; it is under a different name now, the Slaughterhouse Association which is referred to as the Tuttle organization. That is the only organization of live poultry I belong to. I am not a defendant in this case and was not one in the criminal case. No one at any time told me at what prices I should sell poultry or to whom I should sell poultry. No one told me not to sell Reuben Wiener. I have stated the reason why I did not sell poultry to him.

Cross-examination.

By Mr. Rice:

The Witness: I suspect Reuben Wiener as the man who is responsible for my shrinkage. I could not say he did it.

I never accused him of doing it and never said a word about it to his face. I continued to sell because I didn't know to whom to mention it. I knew from the books that this man used to buy of me the poultry, because his bill was always more than it used to be. He bought all of his poultry from me for nearly a year. I have books showing the amount of poultry that he bought. I will undertake to produce them. I did not come down here to testify against Reuben Wiener that he used to buy of me stolen goods; they called me as a witness. The last time I sold to him was in 1930. In 1931 I did not sell him. I continued to sell him until I closed my wholesale shop.

The conversation I had with Reuben Wiener was I think in October, 1931. I did not attend a meeting of marketmen on the next day, and I did not tell Wiener that I was going to attend a meeting the next day. I did not tell him that I could not sell him until I had attended a meeting of marketmen where they would decide whether I could sell him or not. Nothing of the kind. I told him one thing, "Mr. Reuben Wiener, I cannot sell you any poultry. I got enough trade, and I am not looking for any more trade." That is the reason I refused to sell him poultry, for one thing. I do not know how much he was paying for poultry at the other market at the time. I never asked what he paid. He did not tell me that they were overcharging him. I employ three members of Local 167. I do 20,000 pounds per week, about 100 coops. I have two schochtim. Sometimes I do more than 100 coops business a week. I don't [fol. 958] know exactly how the trade kills; sometimes one butcher comes away; sometimes two butchers go away; sometime comes in new ones; that depends on what trade we do. Mr. Arthur Herbert called me here to testify. He is the delegate of Local 167. He cannot send as many men or shochtim as he wants; he sends as much as we need. I do not know that he has ruined plenty of marketmen. I don't know anything of the kind. I do not know he sent four men and two shochtim to plenty of marketmen who had taken the stand against the combination. I don't know anything of the kind. He sends as much as I need. When I call for an extra man, he sends me an extra man. When I tell him I don't need an extra man, he don't send him. I keep as much as I need. He told me to come here on Wednesday. I did not talk to him. He told me that

they wanted me as a witness and he gave me notice to come. He didn't tell me nothing. He wanted me as a witness because somebody complains against me that I refused to sell him poultry.

Redirect examination.

By Mr. Perlman:

The Witness: I have two shochtim. I have a contract with the Schochtim Union. When I want a schochet I get in touch with the office of the Schochtim Union. That is Joseph Rosenman and Rabbi Bloom. I know that Arthur Herbert is the delegate of Local 167, but not of the Schochtim Union. When I want a schochet I do not ask Arthur Herbert for a schochet, and during the last two years or three years, I have never asked Arthur Herbert for a schochet, and he has not sent me a schochet for the last three years.

[fol. 959] JACOB H. NEWMAN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a commission merchant of live poultry in Newark, New Jersey. My firm is Newark Live Poultry Company, in existence 44 years. I have been in business 28 years. I know Barney Hecht, a butcher, in Brooklyn. He bought poultry from me years ago. I don't think I have sold him any poultry in the last six or seven years. Before that, I used to sell him. He made no request to me to sell him poultry during the years 1929, 1930, or 1931. I had talks with Hecht in 1931, about three months ago. I did not talk to him in 1929 and 1930. I called him on the telephone and asked him to come to my office and I spoke to him in my office. I asked him to buy poultry from me. He came over but he did not like my poultry and he drove away. I did not at any time during the year 1930 or 1931 refuse to sell him any poultry, and I did not tell him in words or in substance that I could not sell him any poultry

because I was afraid of people in New York. I am not afraid of anybody in New York. No one has interfered with the sale by me of poultry to anybody. I do not know of any interference with the sale by commissionmen in Newark of poultry to anybody. I believe there are seven or eight other commission merchants besides my firm in Newark. I have not heard at any time of any interference with the sale of poultry to anybody in New York. I sell to people in New York occasionally. Whenever people from New York come to me, I sell them if their credit standing is satisfactory to me. There has been no interference with me except what I have read in the papers about interference during the strike of the men, that is all I know about it. This was a couple of years ago.

Cross examination,

By Mr. Rice:

The Witness: I employ about eight men. As far as I know they are not members of the International Brother-
[fol. 960] hood of Teamsters, Chauffeurs and Stablemen and Helpers. I know Charles Shairer. He is the inspector over in Newark. He goes around to various commission houses or around the various cars and inspects poultry. I don't think he does anything else. I have never seen him in company with John J. Conlin. He has come to my place of business. He would naturally talk to the men there, I suppose he does. The men working at the Railroad Terminals in Newark in the unloading of poultry are not union men that I know of. There are 11 people, I, my brother Aaron Newman, a bookkeeper and eight men working in my place. I am general manager. I manage the concern, but if a buyer comes in there, he can go to my brother and buy. He is secretary-treasurer. I do not know Morris Lieb. I know of the Superior Live Poultry Market in Passaic; a Harry Goldman in that corporation. He bought poultry from me but I don't know when exactly. He may have bought from me in April, 1931. I don't think I refused to sell him poultry. When I testified a while ago that at no time have I ever refused to sell anyone poultry, I had reference to men generally that wanted to buy poultry—if a man owes me a bill for goods, and comes

back next week, I won't sell him again. No one told me not to sell to the Superior Live Poultry Company. I know Louis Goldman, a marketman in Passaic. He never asked me not to sell to Harry Goldman of the Superior Live Poultry Market. I know Max Solomon. He is a commission merchant in Newark and in competition with me.

Redirect examination.

By Mr. Kaufman:

The Witness: At the present time he is in a hospital over here in New York. He has been operated on a couple of days ago.

[fol. 961] HARRY STEINBERG, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I have been a marketman of live poultry in the Bronx for the past two years. Before that I was working on the East Side. I am not a defendant in this case and was not one in the criminal case. This year I have lost about $12,000 as a result of the extension of credit to my customers. I discussed that matter with other marketmen during the summer of this year; with Mr. Siegel of the Bronx; with Mr. Simon of Harlem; and with Mr. Max Wolas of Harlem. After that a meeting of marketmen in the Harlem and Bronx was called, at the Franklin Casino on 19th day of October. There were, I believe, 26 in all from Harlem and the Bronx, out of approximately 29 doing a wholesale business.

[fol. 962] ABRAHAM FEIVELSON, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Perlman:

The Witness: I am a Jewish orthodox rabbi and secretary of the Rabbinical Board of the City of New York for the last six years. This is an organization from the orthodox Jewish rabbis of the City of New York, having about 150 or 160 members. They are not schochtim, only rabbis who preach in a synagogue. The members of our Rabbinical Board are the orthodox Jewish spirits of New York. From time to time there are submitted to our board disputes between Jewish organizations and Jews of New York City and members of the board sit in judgment to make decisions on these disputes. The hearing is called a Din Torah or decision. "Din Torah" is the law of the Bible. In other words, these hearings are under the law of the Bible. After we have that hearing we make a decision and give the parties the decision. Defendants' Exhibit D for identification is a decision. I recall the paper, I signed this. I remember the occasion, what it was that brought about the signing of that paper by me. The date is written in Yiddish, corresponding to either September or October, 1926. I remember Benjamin Rosenfeld, a marketman, coming to see me about the time that that paper was signed.

Q. Mr. Feivelson, did Rosenfeld appear before the rabbinical board?

A. Yes.

Q. Did representatives from the Schochtim Union appear before the rabbinical board?

A. Yes.

Q. Did Rosenfeld, Benjamin Rosenfeld of 80 Jefferson Street, sign the paper that you have in your hand?

Mr. Rice: I object.

The Court: Sustained, I don't care whether he did or not.

Q. Was there a hearing and discharge——

Mr. Rice: Objection.

The Court: Sustained.

Q. Did your rabbinical board give a decision at that time?

Mr. Rice: Objection.
[fol. 963] The Court: Sustained.

Mr. Perlman: I respectfully except to all these rulings. The only thing I want to show in this direct examination is that it is not true, that Rosenfeld is lying about it. Now, that was brought out by the Government's side.

The Court: I adhere to my ruling. Proceed.

Q. Did representatives of the Schochtim Union sign that paper?

Mr. Rice: Objection.
The Court: Sustained.
Mr. Perlman: I respectfully except.

Q. Was that paper written by you?

Mr. Rice: Objection.
The Court: Sustained.
Mr. Perlman: I respectfully except.

Q. Did Mr. Rosenfeld submit a dispute that he then had with a schochet of the Schochtim Union for decision by the rabbinical board?

Mr. Rice: Objection.
The Court: Sustained.
Mr. Perlman: I respectfully except.

Q. Can you translate that paper you have in your hand in English?

Mr. Rice: Objection.
The Court: Sustained.
Mr. Perlman: I respectfully except.

Q. You say the time he came to you was in either September or October, 1926?

Mr. Rice: Objection.
The Court: Sustained.
Mr. Perlman: I respectfully except.

Q. Did Rosenfeld come to the rabbinical board with respect to some dispute with either a shochet or the Schochtim Union after you signed this paper marked Defendants' Exhibit D for identification?

[fol. 964] The Witness: Benjamin Rosenfeld came to the rabbinical board after this occasion in September or October, 1926. The paper marked Defendants' Exhibit P for identification is in my handwriting. I sent that to the Schochtim Union.

Mr. Perlman: I offer it in evidence.
Mr. Rice: Objection.
The Court: Sustained.
Mr. Perlman: I respectfully except.

The Witness: The date on the paper corresponds to February or March, 1927, at that time Rosenfeld and the representative of the Schochtim Union came to see me and also a schochet named Possman.

Q. Do you recall what the dispute was between Benjamin Rosenfeld and Schochet Possman at that time that you sent that letter to the Schochtim Union, do you recall that?

Mr. Rice: Objection.
The Court: Sustained.
Mr. Perlman: I respectfully except.

Q. Was the dispute between Possman and Rosenfeld submitted to the rabbinical board for decision?

Mr. Rice: Objection.
The Court: Sustained.
Mr. Perlman: I respectfully except.

Q. Was any question with respect to the kind of business that Benjamin Rosenfeld conducted in his market ever submitted to the rabbinical board in 1926?

Mr. Rice: Objection.
The Court: What relevancy has that with this case?
Mr. Perlman: Well, Rosenfeld being called as a witness for the Government, we can show he has perjured himself in a material fact. I except to ask your Honor to disregard his testimony.
The Court: Objection sustained, you have not pointed out that it has any relevancy whatever. Proceed.
Mr. Perlman: I respectfully except.
The Court: It has nothing to do with the rabbinical board.

[fol. 965] Mr. Perlman: I will stand on the exception then.

The Court: I recall the questions put and I have a note of the questions put to the witness Rosenfeld in regard to this matter and what is here sought to be brought in is entirely immaterial.

Mr. Perlman: Your Honor will consider his testimony material, naturally.

The Court: I did not say that. It is on an immaterial issue.

[fol. 966] Jacob Goldwasser, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Perlman:

The Witness: I am a schochet and a member of the Schochtim Union. I was a schochet in the poultry market of Benjamin Rosenfeld at 80 Jefferson Street, in the year 1927, about seven weeks. I was receiving a week only $40. which at that time was the wage scale for a retail market. I never refused to kill poultry for Benjamin Rosenfeld while I worked for him.

Cross-examination.

By Mr. Rice:

The Witness: The delegate of the Schochtim Union is Charles Herbert. The office of the Schochtim Union gives me the job and not Charles Herbert. Whenever I get a new job in the market as a schochet the president gives me the job. He is Rabbi Jacob Bloom. In the office there are also the vice president, Milter, trustees and cashier, and Joseph Rosenman, the secretary. Mostly it is only the president who had anything to say about giving me a job at a market. The president back in 1927 and 1928 was Kalman Shapiro and the secretary at that time was Mr. Charlitt. Joseph Rosenman became secretary about two or three years ago. Maybe in the middle of 1928, maybe on the beginning of 1929. The president, Mr. Shapiro, sent me to Benny

Rosenfeld. He did not say I was not to kill for a wholesale customer. Charles Herbert did not tell me. I never saw him. He did not tell me not to kill for strange butchers. Whenever is coming a butcher I never refused. I worked for him seven or eight weeks, I never refused for somebody to kill. What Benjamin Rosenfeld testified about me refusing to kill three chickens for a butcher is not true. I am positive no one told me not to kill chickens for butchers that came into Rosenfeld's market. I know that Charles Herbert went to trial, and was found guilty and then went to jail for a while. I did not give money to defend Charles Herbert in that trial. I do not know that there was a collection made to defend Charles Herbert. I pay to the Schochtim Union four dollars a month dues. I have not [fol. 967] recently paid any money to Charles Herbert to defend him in any suit brought by the Government, and I don't know whether other schochtim have. I have never heard that the Schochtim Union has paid any money to defend Charles Herbert.

I worked for Louis Weidberg a few days, about three years ago. I did not see Jacob Rosenfeld assaulted by Samuel Weidberg in Weidberg's market. No one asked me to come to court and testify on that occasion. I don't know anything about it. I never was in court. I am here the first time.

[fol. 968] HARRY STEINBERG, recalled;

Redirect examination.

By Mr. Kaufman:

The Witness: I acted as Chairman of that meeting and opened up the meeting, said a few words to the body, especially about the way the butchers have been paying their bills because being that I was only about two years in the Bronx and from what I saw from my business I was wondering really how these butchers are getting credit and on what they are getting credit and I addressed the meeting, and the next speaker was Mr. William Simon. I told them and showed them facts that I was in the Bronx only two years and I can prove that I had over $12,000 losses in the past two years and that is the way they think they

can run business or give a butcher or anybody credit without asking how or who they do business, I think it is very poor business policy, and after I got through talking Mr. Greenfogel addressed them and explained — them how a credit association should go on. I asked the people present at that time to become members and handed out subscription blanks at that time to become members. These subscription blanks were signed by each one individually.

Mr. Kaufman: I offer the subscription blanks in evidence.

(Marked Defendants' Exhibit Q.)

The Witness: The initiation fee was $50. The market men members of this association were to pay to the Association by way of dues 50 cents for every thousand pounds of poultry that they sold at wholesale. No officers were elected, but the board of directors was. The first was Charles Siegel, Harry Steinberg, Max Wolas, William Simon, Al Winkel, Sam Brumberg and Benjamin Panish, seven people. After this meeting on October 19th a directors meeting was held five or six days later when the following officers were elected. Myself, president; Max Wolas, Mr. William Simon, vice president; Benjamin Panish; two treasurers were there, I can't remember which. One more elected to countersign with the treasurer. He was elected assistant treasurer. At the directors meeting it was decided to call another general meeting and if the body of [fol. 969] officers were elected, start functioning on the credit association. The second general meeting was held about two days later. I think it was a Saturday night, November 2, 1931. Thirteen of the twenty-six members have paid their dues, and the remaining 13 refused to pay, have not paid up to this date.

The association took an office and employed one secretary and a credit man. The secretary is a stenographer. The office sent out letters to get information but we received very few replies. This sheet of paper, Defendants' Exhibit R, is the form that the butchers or chicken dealers should fill out. For the collating of this information we have prepared index cards, a copy of which is Defendants' Exhibit S. There was a meeting of the Board of Directors and it was decided that if the members don't care to pay their dues and the office has to be kept running, if the dues can't be paid we will have to abandon the office, because the or-

ganization cannot afford to carry on with the present paying members. There was no discussion at any of the meetings of the Harlem & Bronx Live Poultry Board of Trade, Inc., to fix prices for the sale of poultry amongst market men or to allocate customers, or to refuse to sell butchers or chicken dealers for any reason, or about market men insisting on a receipted bill. There was a reference made to unpaid bills. At that meeting it was discussed that if a butcher did not pay his bill the market man should let the credit office know and if a customer came in to buy today that I did not know, why, I would call up the credit information bureau and find out his record.

If I were to see that his credit is good or his credit is not good, it would be up to me, if I would want I would extend him credit, if not, I could do just as I pleased. There was no discussion that the market men should report to each other as to the persons to whom they sold or anything else. One member I know stopped payment on his check and one member said that he couldn't belong to the association because he was a very small man and it did not pay him to [fol. 970] get credit information and we returned him his check.

Recross-examination.

By Mr. Rice:

The Witness: I am not a brother of Aaron Steinberg or any relation to him.

I have been in the poultry business about 15 years, working in the market. I was with the firm of Mirotznik and Rosenberg on the East Side in 1927 and 1928. Mirotznik paid money to the Chamber of Commerce at that time. From what I heard it was 10 cents a coop paid. I do not know whether he paid anything in addition to that.

I know Louis Weidberg. I couldn't tell you whether Weidberg came to Mirotznik's market in 1927 or 1928 to make collections for the Chamber of Commerce, because I never used to come down to the market. I was on the outside buying poultry in West Washington Market. I do not know whether there was any division of customers in 1927 and 1928.

At this meeting of the Harlem & Bronx Board of Trade about two months ago we discussed credits, collections—if

a butcher owes a man money we should see through this Board of Trade, we would have a lawyer and see that we collected our money if the butcher did not pay. There was no discussion of collection of bills. I would have to see that I collected it through a lawyer, sue him for it. We discussed at the meeting, about credit information. About collection of bills is something that everybody can do himself. We don't have to discuss that. There was no plan about making any butcher pay bills. I explained to the body if they wanted to find out credit information for a customer that came in to kill all they would have to do is call up the bureau and the bureau would furnish them with that information. That is all that was discussed. Nothing was said about demanding receipted bills. After the first meeting was held the price of poultry in the Bronx did not go up to 10 to 12 cents above the market quotation that I know of. I charged the day after the first meeting as much as I charged before. I really don't make the prices, the butcher [fol. 971] pays what he wants. We quote a price but whenever he comes to pay the bill he pays whatever he likes and we keep on selling him. What we charged on September 19th, 1931, I couldn't tell you, I am not the salesman in the place, I do the buying. We charged after the first meeting of the Harlem & Bronx Board of Trade about four cents above the market price. We are charging today the same thing, maybe less. The member of the Board of Trade who cancelled payment on his check was Max Cohen. I do not know what happened to Max Cohen the day after he cancelled payment of his check. I do not know that he went down to West Washington Market for poultry the next day and was refused poultry. I do not know anything about Max Cohen's difficulty. I was not responsible for it. There was no discussion among the market men of Max Cohen's refusal to join the organization. Max Wolas asked me to come here and testify. He is a defendant in this case and an officer of our association.

I have never seen Charles and Arthur Herbert and Max Wolas together. I did not see them in a conference, I seen them walking in the court. I don't know that they have a business together. I do not know that they levy a tax upon the ducks that are sold in West Washington Market. I don't know whether or not Max Wolas has any influence with the delegates of the labor unions. That wasn't dis-

cussed among the market men before the meeting was held. Max Wolas did not say that he could control the unions. I do not know anything about the practice that existed in 1927 and 1928 of demanding receipted bills from butchers. I never heard of it before.

William Greenfogel the lawyer made a speech at the meeting. He said a few words to the body, and explained to them what the association is to be, what credit information the association can give to the buyers and what help it can do for them. What it can do for them, it would be better than the way the business is running today on such free and open credit; that we are going to cooperate. He did not say we had a right to refuse to sell poultry or the right to demand receipted bills. No one did.

[fol. 972] We discussed the plan of this organization prior to their first meeting. Wolas, myself, Mr. Siegel and Mr. Simon, months ago, during the summer months, I think. We talked only about the credit information which was brought about especially by the way business was conducted in the Bronx, being that I was such a short time in the Bronx and I lost so much money on bad debts. We said nothing about dividing up customers. It isn't a fact that after we held out first meeting that the market men in the Bronx demanded receipted bills from good customers. No practice like that occurred.

[fol. 973] Louis Aronin, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a marketman and I have operated as Sunset Live Poultry Market in Bayridge section of Brooklyn for five years. I am not a defendant in this case and was not one in the criminal case.

I know a butcher by the name of Abraham Aaron. He has been doing business mostly with me about three years up to now. Sometimes he don't like to deal with me, when he don't like the quality or something like that. Sometimes I can't afford to sell him for his offer; either I accept or I

don't. I think I did business with Aaron in September of this year. I am not quite sure. I have been charging Aaron above the market quotation for poultry about five or six cents. On September 19th I really don't remember exactly whether he bought of me that day. I cannot recall whether I charged him 34 cents. If I did charge him 34 cents I paid myself for fowl 31 cents. I paid for fowl 31 cents on Yom Kippur; it was Saturday, September 19th.

I am a member of the association existing just now, of the Live Poultry Slaughterhouse Association, generally referred to as Mr. Tuttle's organization. I did not attend the meeting on August 6th at the Broadway Central Hotel. I belonged before it was the Retail Protective Association and then I signed to this one. I was a member of this Retail Protective Association about two years. No one has interfered with me in the sale of poultry, either as to whom I sell to or as to the prices at which I charge for poultry.

I know a butcher by the name of Maurice Cooper. He has been doing business with me about two years. I have been charging him above the market five or six cents on the pound. On September 19th I did not charge him eight to ten cents a pound above the market. He did not complain to me about the price I was charging him. He might [fol. 974] ask me "why so dear?" I explained to him that the stuff cost me more than the market that day. He wanted fancy stuff and then we agreed to it. I did not tell him there was a combination in existence. I did not tell him that I was compelled to charge the higher price by the higher-ups. I did not have any such talk with him at any time or with anybody else. I am not compelled or told by anyone as to what price I should charge. He did not ask me to let him buy in another market. I could say for the past time that he buys from me, he went out once this summer. He was out of business and he didn't buy, I didn't deal with him and as soon as he opened up back again he started to deal with me again. With the exception of once or twice he went away, he didn't like the poultry, he went over and killed a day or two somewhere else and he didn't find anything better, he admitted to me, and he came back and he said, "As long as I know somebody else is not getting better poultry I am not going back again," and he deals with me up to today. I did not say to him that if he went to another market that I would continue to get the

profit on anything he bought just the same. I do not get the profit from any other market men on what they sell to any customers, neither do I pay anybody any profit, that I make on the sale of poultry to somebody else's customers. I am sure there was no such conversation.

Cross-examination.

By Mr. Rice:

The Witness: I have no partners. I have in my place two members of Local 167. One steady schochet and a helper. I sell per week about 12 to 15,000 pounds, about 75 coops. I don't remember if Aaron bought on September 19th at all. I sold to the other butchers on that day from 31 to 34 cents for fowl that came in by express to the market. I paid a high price for that and I got a good price for them. I didn't have or sell any chickens classed as "colored chickens average." I had Indiana poultry, the higher priced poultry. I paid a cent above whatever it is quoted on the quotation, on some of the poultry. I don't [fol. 975] remember that the quotation for chickens on September 19th was 22 cents per pound. If I look up my purchase I could tell you more about it. Sometimes 99 per cent of all of the poultry coming into New York comes by freight. Sometimes I buy a lot of express poultry because my customers are particular, they want to have good stuff and if the freight is not good enough, I buy express. I paid 31 cents a pound for express fowl. Express fowl is one, two or three cents more than freight fowl. It is according to the situation of the day. There is lots of it, there are lots of times when there is a difference of four or five cents a pound. I will undertake to produce my books for September 18th and September 19th showing what I paid and charged for all of the poultry that I bought and sold on those two days.

Redirect examination.

By Mr. Kaufman:

The Witness: Cooper owes me $352 or $357, or something like that. He made an arrangement to pay me that money over a period of time, in August of this year. He didn't pay anything yet. The receivers were charging for

poultry on September 19th 28 cents for fowl and 26 cents for chickens. As to the chickens "average heavy" quoted in Producers Price Current for September 19th, at 22 cents, I don't know if it is wrong or right, but I know I didn't get these prices.

Mr. Kaufman: I offer in evidence the Producer Price Transcript that Mr. Rice just gave us as of September 19, 1931.

(Marked Defendants' Exhibit P.)

Recross-examination.

By Mr. Rice:

The Witness: I don't know what somebody else paid but I know I could not get any poultry unless I paid them the highest price they asked me and even then I could not get enough and I had to go to the market and buy express fowl and pay anything they asked me—to get poultry because I had orders to fill.

Q. If you saw that the market quotation on that day was 21 cents, you would not pay 26 or 28 cents would you?

A. The market quotation is 22 cents, that is the lowest, but there is higher. There is premiums mentioned in the quotation, two and three cents above that also.

[fol. 976] The Witness: I have paid more than the market quotation as it stood in the Producers' Price Current lots of times, positively. I will prove it. I do not deduct from my bill if the commission men charge me more than market quotation.

Morris Cooper still owes me $350 and some odd. I sell to his partner who is liable. He didn't take off anything. When I went out this summer, out of business, his bill for the week was $350 and some odd dollars. When I came for the money, he said he was tied up, to wait, he can't pay now, he is going to pay up in full, I should wait. He never made any attempt to pay. I am selling now to Mr. Plgahman, his partner.

[fol. 977] Louis H. Horowitz, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a live poultry commission merchant in Newark, New Jersey, doing business as Interstate Live Poultry Company. I am connected with this firm for the last four year. Previous to that, I was 20 years in business, live poultry. I did business in the year 1931 with the Superior Live Poultry Company, but I don't recollect exactly the time or month. It owed my firm nearly $2600. After they owed me that money and the checks started to go back, then I refused to give them credit. I used to sell to marketmen in New York. I do not know of any interference with my selling poultry to anybody. I never told Mr. Lieb that no commission merchant in Newark would sell to him. I never had any such conversation with him that I know of.

Cross-examination.

By Mr. Rice:

The Witness: I never told Mr. Lieb if he could get poultry anywhere in the market to let me know.

I was a member of the Newark Live Poultry Protective Association in 1928. The members of that were all the marketmen from Newark. I was a marketman at that time and the president of that association.

Q. Did you not commence collections in 1927 or 1928 of one cent a pound on the poultry sold by Newark marketmen?

A. No sir.

Mr. Kaufman: I object to that as incompetent—certainly collateral to this issue here.

The Court: Overruled.

Mr. Kaufman: Exception.

The Witness: I do not know John J. Conlin in person. I have heard about him. I don't think I have seen him. I read in the press he is a delegate of the Schochtim Union. He did not work with our organization in 1927 and 1928 and was not hired by it. I never collected one cent a pound from the marketman, on all the poultry they sold

or any sum at all. I did not pay anything to the organization. We just come around and discuss business. I knew [fol. 978] Mr. Roth in the poultry business. Our organization never prevented him from buying poultry. He always had poultry. He was underselling the marketmen to a certain extent in Newark. Neither I nor the organization did anything about it. I don't know whether Conlin did or not, I don't know the man. I do not know that Roth was refused poultry in West Washington market at that time. I know Charles Sherer, food inspector on poultry. He worked for our organization at that time, inspecting poultry; that is all, he didn't prevent marketmen from loading poultry. He never had anything to do with that. I do not know that many people were unable to buy poultry in Newark in 1927 and 1928.

[fol. 979] DAVID MARSHALL, recalled.

Direct examination.

By Mr. Kaufman (continued):

The Witness: I have made an examination of the check books of the Greater New York Live Poultry Chamber of Commerce for the period of the year 1929 and the early part of 1930. The first book starts with stub check #2001 and is dated December 15, 1928, and the book continues down to and including stub check #2492, dated November 16, 1929. After stub check 2492 there are three pages of stubs on which there is no writing except on the page immediately following the writing under the date of November 16, 1929 appears the word "void" written three times.

Mr. Kaufman: I offer in evidence this book.

(Marked Defendants' Exhibit U.)

The Witness: The second book begins with stub check #2501 dated November 18, 1929. The stubs are filled in up to and including #2573 dated January 31, 1930. In the balance of the book there is no writing.

Mr. Kaufman: I offer this in evidence.

(Marked Defendants' Exhibit V.)

The Witness: I have examined Government's Exhibit 25 showing a list of the payments made by Bernstein & Sons to the Greater New York Live Poultry Chamber of Commerce and have compared the list of payments as set out in Government's Exhibit 25 with the receipts deposited by the Chamber of Commerce as appears in the check books Defendants' Exhibit- U and V; they both agree. Exhibit 25 indicates that between the period December 15, 1928 and January 31, 1931 the Greater New York Live Poultry Chamber of Commerce received $54,842 and the check books Exhibits U and V show the receipt of the same amount. I have calculated the expenditures made by the Greater New York Live Poultry Chamber of Commerce between those two dates which total $63,167.87. They expended approximately $9000 more during that period than they [fol. 980] received. The bank balance of the Greater New York Live Poultry Chamber of Commerce on the 15th of December 1928 must have been at least the difference between the amount received and the amount expended. The books indicate that the Greater New York Live Poultry Chamber of Commerce made their expenditures as they received the money from Bernstein & Sons. I have prepared a summary from the books Exhibits U and V as to what the sum of $63,000 odd that was expended. They are: legal expense, $28,325.00; that was paid to various attorneys, John W. H. Crim received approximately $23,000 of that total of $28,000; stenographic services and transcript of trial minutes to MacClinton and Bruckheimer who are the official reporters on the criminal side of this court, $7,519.75:

Bail bonds	$5,188.00
Traveling expenses	2,631.77
Accounting service	1,200.00
Inspection salaries	7,450.00
Outside inspection cost, that is the Department of Agriculture	221.25
Advertising	249.10
Rent	1,575.00
Office salary	2,992.00
Miscellaneous expenses	1,191.14

Miscellaneous consists of small items, such as stationery, printing and any other items no larger than $15 that did not fall in any large calculation. Telephone was $94.86.

Repayment of loans made to the Chamber of Commerce	4,100.00
Charity	500.00

That gives a total of $63,167.87.

[fol. 981] JULIUS KASTEIN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a poultry commission merchant or receiver at West Washington Market. The commission merchants sell to the marketmen. They get their poultry from the shippers in the west which comes here either by freight or express. I am familiar with the market price of poultry. The market on September 19, 1931, was very firm. We had a very strong demand and the demand was greater than the supply. The values settled that day for the average grade of poultry only as a basic settling price for the ordinary stock at 23 cents. While the finer grades of fowl sold that day as high as 28 cents, the bulk of the stock sold that day about ten carloads at 27 cents, my real fancy poultry. On chickens that day I estimated 26 cents for my Indiana grades. In order to get to a definite price and values we got to decide on a basic settled price for the ordinary grades, and the finer grades sell at a premium basis according to quality, one cent premium, two cents premium or three cents premium,—in some cases four cents premium, it all depends on the quality of the poultry. That is freight poultry. As a rule the finer grades, the express, usually exceed the price of the freight. This so-called set price is usually made between 12 and 1 o'clock. The marketmen go to the railroad early in the morning and buy their poultry and at the time they buy their poultry they only agree at times on the premium they are to pay, but the basic price is set later in the day. The only arrangement that is made between the marketman and the receiver on the railroad is that the marketman will have to pay a premium of 1, 2, 3 or 4 cents a pound over the price that is

quoted by the receivers during that day between 12 and 1 o'clock. The marketman usually don't sell it until the following day. He gets it in his place and comes on the Exchange and we argue out what we think the price should be, buyers and sellers, and then we both agree.

On the 19th of September, 1931, the basic price on an [fol. 982] average crate of chickens was for the ordinary quality 22 cents; but I sold my fine grades that same day, the real Indiana quality for 26 cents, and we sold some Rock Chickens, straight Rock Chickens, at 28 cents. The difference between fowl and chickens is that fowl you use for soup; chickens you usually use for roasting. As to the different classifications of fowl, such as fowl color heavy, fowl color average weight, and fowl color light to medium; light to medium is usually the upper sizes of fowl; undesirable; the average grade of fowl you get from Oklahoma—not good quality; the good quality is a little heavier fowl, that comes from Nebraska; then Ohio and Indiana fowl which are really fine. The same thing pertains to chickens, the heavier the fowl or chicken, the more they are worth. Broilers are usually used for frying. I do not see any reference to broilers on Defendants' Exhibit T. What the market was for broilers on September 19th I really could not tell you. It is not quoted. I know about that time of year broilers and chickens sell about the same price. The printed matter on Defendants' Exhibit T, beginning at the end of the fourth column on that page under the heading of live poultry freight says: "Today 32 cars were in, all of which are being unloaded. Contents are:

968 coops colored fowls.
175 coops Leghorn fowls.
1414 coops colored chickens.
140 coops of Leghorn chickens.
33 coops of cocks.
40 coops of ducks.
2 coops of geese.
2 coops of turkeys.
2 coops of rabbits.
4 coops of pigeons."

"Fowls and chickens entirely in seller's favor and higher with the great bulk of the stock, selling today above average markets."

"In addition to the premiums given below a further cent is being charged for Indiana grade fowls and 1 and 2 cents further is being charged for pet marks of colored chickens with a heavy mixture of Rocks. Ducks easier."

[fol. 983] A heavy mixture of Rocks means it would have quite some Plymouth Rocks with colored chickens. Plymouth Rock chickens are more desirable chickens. You could not buy colored fowl average for 23 cents, on September 18, 1931. I sold a car from Kentucky which is very ordinary at 26 cents. I sold seven cars at 27 cents that day; I sold two more cars at 26 cents that day. 26 cents was the cheapest price at which I sold fowl on that day. Under the heading of Express and Truck Fowls colored at 27 cents, on Exhibit T, that means the better grade sold at 27 cents, but you could not buy the better grade that day at 27 cents. The 19th of September was a Jewish holiday, the demand preceding the holiday is much greater, especially for the finer grades. They want the heavier fowls that day. I don't think any fowl sold that day for 22 cents. I sold poultry on the 19th of September to the Sunset Live Poultry Market and I have brought with me a copy of my bill. I charged him for fowl on that day 27 cents. I gave him some Rock Chickens at 28 and I gave him some chickens at 25. On September 19th we sold the Sunset Live Poultry Company:

1589 pounds of fowl at 27 cents.
305 pounds of Rock Chickens at 28 cents.
187 pounds of Leghorn fowls at 19 cents.
1606 pounds of chickens at 25 cents.

I believe for express fowls I got on that day around 30 cents fancy New England fowls. As a matter of fact, I was short of fowls that day for my trade and I bought some from another firm and paid 30 cents, and I did not charge my customers any profit on that; I charged the same price. I know that other receivers were selling poultry at higher prices that day than I was selling. It depends altogether on the grade of poultry that they had on hand.

Cross-examination.

By Mr. Rice:

The Witness: I don't think there was a market on September 18th. I cannot tell what the market was on Sep-

tember 17th, offhand. The "Producers' Price Current" dated September 17th shows average grade of chickens on the 17th—21 cents; and better grade fancy selling at one [fol. 984] or two cents premium, coming to 23 cents. Colored medium chickens are quoted at 19 cents on that day, but that does not mean anything; it means that some chickens might have sold at that. My records show me that we sold Rock chickens at 28, colored chickens at 26 and some colored chickens at 25. There was no medium; we had the market very firm that day. According to this paper, it is quoted 22 cents on average chickens on September 19, 1931, and on September 17th medium colored chickens were quoted at 19 cents. On September 18th there was no quotation, if I am correct. The quotation is not the same on September 18th as on the 17th. Whenever we omit the quotations, it is on the basis of the following day. We do that sometimes on that basis when they do not sell it until the following day. The marketman who bought on September 17th for 19 cents did not sell that poultry on September 19th. Saturday is a holiday, and the slaughterhouses do not operate on Saturday. The Exchange is operating but the slaughterhouse cannot do business on Saturday. I sell a very high grade of poultry. We try to get the best we can. I try to get all I can for my poultry; I don't care what the others do. If the trade wants good poultry, they come to me and have to pay the prices for it.

We have a credit organization. It did not go around to the various markets in Brownsville and Williamsburgh and tell them to raise the price of their poultry three cents. I am absolutely sure of that. Neither I nor any representative of our organization ever discussed prices with any of the marketmen in Brownsville or Williamsburgh. I did not tell them that we were forming a new organization whereby every marketman would go up three cents regardless of what he had been charging before. I did not refuse poultry to the marketmen that refused to supply the credit information. I never refused any poultry to anybody who I thought was a good risk.

Redirect examination.

By Mr. Kaufman:

The Witness: According to the "Producers Price Current" for September 18th, 1931, there was no market for

that day, so that the marketmen did not know what they were going to pay for poultry bought on September 18th, until the price was settled on Saturday, the 19th, between [fol. 985] twelve and one o'clock. When the marketmen went to the receivers to buy their poultry, all that was agreed on was the amount of the premium that they would pay over and above the settled price.

[fol. 986] HARRY SCHATT, called as a witness on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am a salesman for Service Commission Company, receiver in West Washington Market for express poultry. We did business with the Sunset Live Poultry Company on the 19th of September, this year. I have produced our records showing our transactions with the Sunset on the 19th of September. We sold that company 438 pounds of fowl on September 19, 1931 at 31 cents a pound and it paid us for it.

Cross-examination.

By Mr. Rice:

The Witness: I did not sell the Sunset any on September 18th or 17th. I had no fowl on those days. On September 18th we had ducks, and we also had broilers. We charged for broilers 29 cents. I have not got the record for the 17th. All I had was broilers on the 18th. I do not think I had any chickens. I just had fowl and broilers and ducks on the 19th.

[fol. 987] GARLAND GALLOWAY, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kauffman:

The Witness: I am manager of the Galloway Credit Bureau whose business is to accumulate and disseminate

credit information with respect to market men of live poultry only. We give the information that we get to the receivers in West Washington Market. Our Bureau is a Central place where the receivers go to get their information with respect to market men who desire to purchase from the receivers. During 1931 we had no credit information on Barney Hecht, nor any financial statement. I know about his credit standing, but not from any records that we have on file. I know Max Cohen. He is one of the individuals in a corporation called the Pleasant Live Poultry Corporation. I have statements that have been taken from his books showing that he is indebted to the extent of five or six thousand dollars, which is all past due. He has been behind in the payment of his bills for at least one year. I know he gave checks in the market that came back. In several instances, and I cannot recall the dates or the amounts, but I was called on the 'phone several times by the commission merchants and asked to get in touch with Max Cohen regarding checks which had come back. Just recently I have had one on a cash sale. I mean he bought poultry for cash, gave a check in payment, and the check came back. Mr. Cohen has called a meeting of his creditors. I was there, and I have talked with him. Mr. Cohen came to my office and spoke to me and told me that he was not in a position to pay his bills and requested an extension of time and I made arrangements with him, with one creditor who we were about to sue on his account, for him to pay $25 a week.

Cross-examination.

By Mr. Rice:

The Witness: All the marketmen are at some time or another indebted because they buy on a weekly basis. Five or six thousand dollars of indebtedness is much in the poultry business, especially when it is past due. A great [fol. 988] number of marketmen are indebted for three or four times that much.

Redirect examination.

By Mr. Kaufman:

The Witness: The marketmen who owe much more than five or six thousand dollars in the market pay their bills promptly. Mr. Cohen did not pay his bills promptly.

Mr. Kaufman: Will you stipulate, Mr. Rice, that we may, if you desire, read into the record the testimony given by Mr. Galloway at the criminal trial respecting Mack Harnett?

Mr. Rice: I will on the condition that we be permitted to read the testimony of Matthew Harnett and of Mack Harnett in response to Mr. Galloway's testimony.

Mr. Kaufman: It is all right with me.

Mr. Rice: Certainly.

Mr. Kaufman: Yes.

[fol. 989] HARRY STEINBERG, recalled.

Direct examination.

By Mr. Kaufman:

The Witness: I am one of the largest buyers of poultry in the New York market. This is the way prices are ranged from the marketman's point of view when he goes to West Washington Market and buys poultry. I get down to the railroad about seven o'clock in the morning. I look my poultry over. I see a car of poultry that I like and I ask the commission men how much they want for this car of poultry. Well, if he thinks the market must not go to him, there is no price established in the morning on the railroad, but if he thinks the market must go to him, he says, "Well, I can sell you this car of poultry for one cent over anything mentioned in the quotation." If he thinks the market ain't so good, he says, "It will cost you the top price, whatever is quoted." You buy poultry on the railroad, all your supply, and sometimes if you run short of poultry on the railroad, you run down to the market and try to buy express poultry.

In order to get this express poultry, the man who wants to sell it says, "I will sell you this lot of express fowl, I don't care what the quotation is, but I have got to get two cents more than quoted in the quotation," and of course naturally I take the poultry because I need it.

Buyers, receivers, jobbers, they get up on the exchange and bids are made and offered and Harold Tabor, the man who is there for the Producers Price Current, he takes these bids. Sometimes he takes the higher bid, sometimes

he takes the lower bid, and he mentions in his quotation, sometimes he submits bids and the value of poultry is established and the amount of supply that is in New York.

If the supply that is in New York is not too much, why, there is some statement as to how much the price should be—only on what is offered to sell and what buyers offer to pay.

On the 19th of September I bought in West Washington Market from about six or seven people. The market on [fol. 990] that day was 27 cents on freight fowl and 29 cents on express fowl. I paid 31 cents for practically all of my poultry. This paper is a ticket from the Chelsea Live Poultry Company. I got it on the 19th of September when I went over there and bought poultry.

Mr. Kaufman. I offer that in evidence.

(Marked Defendants' Exhibit W.)

The ticket says I am to pay two cents above any express premium mentioned in the quotation. It was signed early in the morning on September 19th. The market quotations established between twelve and one o'clock. At the time I took that paper and ordered that fowl, I did not know what I was going to pay for it. All I know, I agreed to pay two cents over any market quotation. Subsequently I got this bill for that purchase.

Mr. Kaufman: I offer that in evidence.

(Marked Defendants' Exhibit X.)

Referring to Defendants' Exhibits W and X I paid for the fowl that I bought from the Chelsea Live Poultry Company on September 19th, 31 cents a pound. That is express poultry. On the same day I bought express poultry from Michael Garlick & Son. With respect to each purchase I got a ticket in the morning and a bill after the prices were established for the day.

Mr. Kaufman: I offer in evidence the bills and the order tickets, as one exhibit.

(Marked Defendants' Exhibit Y.)

I paid for fowl that day from M. Garlick & Sons 31 cents, and I bought 2,442 pounds. I also bought some fowl on that day, 1,243 pounds of fowl, at 23 cents a pound—that is Leghorn fowl.

Cross-examination.

By Mr. Rice:

The Witness: I buy express poultry when I cannot get enough freight poultry. Express poultry is higher than freight poultry. Sometimes two cents, sometimes three cents, sometimes five cents. The price of medium colored chickens on September 19th was 22 cents.

[fol. 991] Max Solomon, a witness called on behalf of the defendants, testified as follows:

Direct examination:

The Witness: I have been a commission merchant in the live poultry business in Passaic, New Jersey, for a few years. I am incorporated as the North Jersey Poultry Company, a corporation of the State of New Jersey. I have known Barny Hecht some years. I did not sell any poultry to Mr. Hecht until about a few months ago, when he came to my place of business. It must have been in September, 1931, if I am not mistaken. I sold him once. The man owes me money; he didn't pay me. He took me off two cents on the pound on that one sale. He paid me, but he took off. I had a hard time to get from him. He was supposed to pay cash for it. He gave me a check, the amount was smaller than the purchase and he deducted two cents on the pound. He did not come to me at any time after that to buy merchandise. He says he can go to Philadelphia and buy better stuff than in Newark. I did not at any time during the year 1931 ask Mr. Barney Hecht to come to me to purchase poultry from me. He called up for poultry, and I says "If you will bring cash, I will sell you stuff." That was before this sale that I referred to. He wanted me I should send over poultry and then he would pay—I wouldn't do this. I says "Bring the cash". After that conversation on the telephone, Mr. Barney Hecht came to Newark where I unloaded the merchandise on the railroad. It was there that he asked me to sell the merchandise, and the sale which I made to him in September was the result of that conversation. I never told him that I would not sell any merchandise to him. I never told him

in words or in substance that I would not sell any mer-
[fol. 992] chandise to him because if I did sell merchandise to him gangsters would beat me up. I never mentioned anything of that kind. No one had ever threatened me in any manner or told me they would do anything to me if I sold any merchandise to Barney Hecht. I did not tell any other person that I couldn't sell merchandise to any person because I was afraid that gangsters would cause trouble for me. I was not at any time ever threatened or told by gangsters I should not sell merchandise to any person. I don't know of any other commission man in Passaic or in Newark who was told not to sell any merchandise to any particular person, nor did I ever hear any commission man say that he had been told by anyone not to sell merchandise to Barney Hecht to any other marketman in New York.

Cross-examination:

The Witness: Barney Hecht did not tell me why he came to Newark for poultry. I wasn't very sure this transaction with Hecht was in September. I think it was. If Barney Hecht testified his difficulties were in April, 1931, I think he is wrong, it was later than April. I sold him poultry, and I did not tell him I didn't want to sell him poultry. He did not tell me why he came to me to buy poultry, and I do not know why he came way over to Newark to buy poultry. Nobody suggested the reason to me. I know there are many places in West Washington market where he would ordinarily be able to purchase poultry. There are many days on which the commission man himself calls us up to Newark to sell him this merchandise because they are short of it. I don't remember whether any commission man called me up on this particular day. They called me numerous times, but not in relation to Barney
[fol. 993] Hecht. My records can show when I sold him merchandise. I have never refused to sell Barney Hecht poultry. On this occasion when he came over to buy poultry from me, I demanded cash. I got a check; he says he don't want to carry cash with him. The check was paid. The check was made out, a blank check, for an amount. After, when the bill was sent to him he took off from the purchase two cents on the dollar. He gave me the check at the time of the purchase. He took off the two cents when

he gave me another check for a lesser amount. He owed more money. I didn't cash the first check for the full amount, because I wasn't in New York then. I couldn't cash it. He gave me the second check about a week after the first one. The first check was cashed in the meantime, but the amount of the purchase was bigger than the check he gave and then when he got the bill, instead of paying the full amount he deducted two cents on the pound. As to why he was deducting the two cents, he said that is the way he wants to buy in Newark, otherwise he can go to Philadelphia and buy better merchandise. He did not say I was overcharging him. We charged him market price. He says he don't want to pay the full price. He said that he could have gotten it cheaper on that day in Philadelphia. I didn't follow Barney Hecht around to the other commissions houses. I don't know whether or not he was refused poultry by other commission men.

I know Abram Kantor in Passaic. He is a private business man, not in the poultry line. I should judge he held stock in the Superior Live Poultry Market. I saw Abram Kantor there. I did not tell the proprietors of the Superior Live Poultry Market that I could not sell them any poultry. I didn't want to sell them poultry. They owed me [fol. 994] eight hundred and until they paid me, I wouldn't sell them. It was in the beginning of 1931, maybe around March 23rd. They owed me $1,200.00 for merchandise and they wanted more stuff. I demanded money and they only gave me a couple hundred dollars. I did not say when I entered that market that I couldn't sell any chickens to the Superior Live Poultry Market. I refused to sell them but I did not say, "I have six or seven customers in Passaic and they tell me that if I give you chickens I will lose them as customers." I did not say I had been threatened or that my life was involved if I sold any chickens. I told them to pay me my bill then I will sell the merchandise. I did not say anything about other market men. I do not know if the Superior Live Poultry Market was underselling the other markets in Passaic. Nobody told me that they were underselling and therefore I should stop selling to them. They wanted merchandise without money. I don't know the Superior Live Poultry Market was a charity corporation and that they were advertising that they would sell at cost and that any profits they made would go to

charities. Maybe there was a thing like that, but I can't remember.

I know that the Superior Live Poultry Market went outside of Newark to buy poultry. I don't know whether other commission men in Newark refused to sell them, or not. I know that I refused to sell them until they paid me $868.00. I don't know that the Superior Live Poultry Company went to West Washington Market in Manhattan and attempted to buy poultry from commission men there and that they were refused poultry.

I don't know the name Max Keslin, who works around West Washington Market. Maybe if I saw the man, maybe I would.

About three or four weeks after the first time I talked with Abram Kantor at the market of the Superior Live Poultry Company I asked him for my money, nothing else. He says, "We got to get in the money and we will pay you every cent we owe you." About buying poultry from the [fol. 995] commission men he said nothing. He said that they took my money and went to Philadelphia to buy. Kantor had the money and went to Philadelphia. I asked him why he didn't pay me. They never offered to pay me my money. They owe me. I don't know that there was an attempt on the part of the market men of Passaic and Newark to oust the Superior Live Poultry Market from the business because they were underselling their competitors. I was selling the market men in Passaic, the market men in Newark and the Superior for a long time. Then I refused to sell the Superior because they didn't pay. They never agreed to pay. They wanted the merchandise and they didn't want to give any money. Louis Goldman never told me that he didn't want me to sell to the Superior Live Poultry Market. He had a market near by the Superior Live Poultry Market, but I don't know whether the Superior Live Poultry Market was underselling him and other market men. My business was only selling the merchandise. On the second occasion that I talked to Abraham Kantor on or about April 17th, 1931, I did not tell him that I was very sorry that I couldn't sell him poultry but I couldn't be blind because my life was involved; nothing of the kind. I did not tell him that the market men or anyone else had said they would kill me if I sold chickens to the Superior Live Poultry Market. I

don't know that Mr. Horowitz, a commission man in Newark refused to sell poultry to the Superior Live Poultry Market or that the Superior Live Poultry Market attempted to buy poultry there after I refused to sell them. I did not tell Morris Leib in March, 1931, or thereabouts that I had been trying to sell him chickens but that now it was impossible for me to sell any more chickens to him. I did not tell him anything of that sort. I know that Harry Goldman went to buy chickens in Indianapolis before when I dealt with him, not after. When I said a while ago that the Superior Live Poultry Market had taken the $800.00 that it owed me and had gone out of town to buy poultry, [fol. 996] that was Philadelphia. He didn't go afterwards to Indianapolis, not as I know. He never came back to me and tell me he had to pay four cents more a pound because he had to get the poultry in Indianapolis after I refused to sell him. I didn't tell Meyer Baker on or about March 23rd, 1931, that I couldn't sell any chickens to the Superior Live Poultry Market or that the members of the Association of Chicken Dealers of Newark had ordered me not to sell any merchandise to Meyer Baker.

I know a man by the name of Charles Scharer. He is a feeding inspector at the railroad terminals. I don't know who you mean, by John J. Conlin, the delegate of Local 560 of the Chauffeurs Union. I never saw him. I don't know that back in 1927 and 1928 Charles Scharer and others attempted to form several associations of market men in Passaic, in Patterson, Newark, and other cities in New Jersey.

I know that there were several associations formed at that time, 1927 and 1928. Maybe there was an association of market men from Newark formed, of which Louis Horowitz was president. I don't know anything of the kind, that they collected one cent a pound on the poultry sold in New Jersey from the market men. I do not know that one cent a pound was collected on the poultry sold in New York. I have no knowledge whatever that the market men were dividing up customers in New York in 1927, 1928 and 1929. I don't know anything what is going on in New York. Many people bought in Newark and we sold to everybody. We sell to everybody today.

I don't know Sam Davis and never heard that he was refused poultry in Newark. I sell to a great many market

men, steady buyers, in Newark for credit. I sold the Superior Live Poultry Market on credit too. I demanded cash from them because they didn't pay. I demanded money for my merchandise and I demanded money from [fol. 997] Barney Hecht. I have money coming from many market men in New Jersey.

I know Nathan Fauer from the Standard Live Poultry Company. We unload the merchandise at the same place and he sometimes works right in my presence. I do not know anything of the kind that in the spring of 1931 Nathan Fauer stated to Harry Goldman of the Superior Live Poultry Market that he would sell him only if he took it at night in his garage and I do not know that Harry Goldman went into a garage near the Standard Live Poultry Market to accept a delivery of poultry.

Redirect examination.

By Mr. Berman:

The Witness: I did not at any time get the $800.00 which the Superior Live Poultry Company owed me. The original sale which I made to them was on credit and this $868.00 was a balance they owed me for the merchandise sold on credit. This $868.00 has been owing to me about six or eight months. I sold the merchandise a week credit. I believe that the bill was about $1,200.00 and the following week, before I wanted to give them more stuff, I wanted my money. I went in and instead of them paying me the bill, and I was ready to give them another week's credit, they gave me $400.00. I couldn't get them any more merchandise because it could raise up to a bill of $2,000.00, so I demanded my full money and they didn't pay me.

The reason I wanted cash from Barney Hecht was that he is an outside man coming in. I don't know him, I don't know whether his check is good and we want to be sure with our merchandise. We pay cash for our merchandise. I do not at any time extend credit to a man who is not one of my regular customers. As to the sale that I made to Barney Hecht, I remember the check was about $220.00 and the sale must have been something like three hundred and something, around that neighborhood. I can't tell exactly. It is a fair sale. I didn't know exactly what the market

would be, so I trusted him for part of the price. I didn't know what is the price at the market. They are making a [fol. 998] daily market on merchandise so I couldn't figure exactly the amount. The market quotation comes out in the afternoon and this sale I made to Mr. Hecht was in the morning.

Recross-examination.

By Mr. Rice:

The Witness: If I did sell again to the Superior Live Poultry Market it would have brought my bill up to about $2,000.00. I mean that they would buy about $1,200.00 worth of stuff, for each purchase. $868.00 represents less than one week's purchase because they gave me part on that payment as I stated before. They had owed me about $1,200.00, something like that, for one week's purchase and had paid me about $400.00.

[fol. 999] Defendants' Points Continued

Offers in Evidence

Mr. Kroppy: I want to offer in evidence, if your Honor please, the original petition and papers, all the briefs that were filed and submitted in connection with the defendants' motion to dismiss the petition. I first offer in evidence the original petition of which we have now the amended petition. The Government, as I understand it, now is making the same contention as to their right to obtain an injunction under the amended petition that it made at the time the motion was made to dismiss the original petition and I want to show that the Court on that motion by signing an order which was entered decided certain issues which I will object to your Honor passing upon the second time.

The Court: Let it be marked Exhibit Z for Identification.

(Marked Defendants' Exhibit Z for Identification.)

Mr. Kroppy: I offer it for the purpose of showing what the allegations were.

The Court: Excluded, you may have an exception.

Mr. Kroppy: Exception. I offer in evidence the notice of motion to dismiss the original petition which was made returnable on April 4, 1930.

I want to show by the petition, by the notice of motion returnable on April 4th, 1930, to dismiss the petition, by the order that was entered on that motion dismissing the petition and also by the briefs and contentions which were made at that time by both sides that the Court in entering the order at that time decided or ruled that to sustain its action in this case it was incumbent upon the Government petitioner to prove that the conspiracy alleged and described in the petition continued up to the time of the filing of the petition and it was not sufficient to simply allege that there was a danger of the conspiracy being revived or resumed and that it was not sufficient for the Government under the petition simply to prove also that certain of the acts and practices which were described in the petition were being continued by some of the defendants. I base my rights to prove what was actually contended and what [fol. 1000] was decided by Judge Mack in granting that motion and entering the order to dismiss the petition on what was held in the Supreme Court in the case of Oklahoma v. Texas, 259 U. S. 70. The Court said:

"What was involved and determined in the former suit should be tested by an examination of the records and proceedings therein including the proceeding they have submitted the respective contentions of the parties and the findings and opinion of the Court."

Of course, that refers to the case then in hand.

I want to show that in the brief which was submitted by the Government at that time, the same contentions were made and the same cases were cited in support of its right to obtain an injunction as are contained in a brief submitted in this case during the trial.

The Court: You have offered the notice of motion to dismiss. It will be marked Exhibit A-1 for Identification. Excluded.

(Marked Defendants' Exhibit A-1 for Identification.)

Mr. Kroppy: Exception.

Mr. Kaufman: It is not being excluded, as I understand it, on the ground it is incompetent?

The Court: Not at all. This is the order dated April 6, 1930 Marked Defendants' Exhibit B-1 for identification. Excluded.

Mr. Kroppy: Exception.

I also offer in evidence a copy of the Government's brief, dated April 4, 1930, submitted to the Court in opposition to the motion to dismiss the original petition.

(Marked Defendants' Exhibit C-1 for identification.)

The Court: Exhibit C-1 for identification excluded.

Mr. Kroppy: Also defendants' brief submitted in support of the motion to dismiss at that time.

(Marked Defendants' Exhibit D-1 for identification.)

The Court: Exhibit D-1 for identification excluded. Was that submitted to Judge Mack?

Mr. Kroppy: I don't think he read it. I think we discussed the cases in there and argued the thing orally before him. I think portions of it I read to his Honor, as I recall [fol. 1001] it. If your Honor please, I want the record to show that Exhibits Z, A-1, B-1, C-1, D-1 for identification are offered to be considered together on this proposition, and I also at this time offer to testify to the contentions that were made by the Government and by the defendants on the consideration of that motion to dismiss the petition.

Mr. Rice: I object.

The Court: Sustained.

Mr. Kroppy: Exception.

[fol. 1002] HAROLD B. TABER, called as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: My business is market reporting in country produce. I am connected with the paper called the "Pro-

ducers Price Current" referred to here as Exhibit T. I am treasurer of the company. I report the live poultry market. As to the quotations for live poultry on September 19, 1931 appearing in our paper, after due investigation, I inserted these quotations as representative of market values, derived on the basis of willingness to buy, willingness to sell of reported sales. At times there are no open market sales prior to 12 o'clock. If that is the case buyers are accustomed to meeting receivers on the floor of the New York Poultry Exchange. Every single buyer in New York is welcome there and every receiver is welcome there and they go over together the factors of supply and demand. They have exact knowledge of the amount of poultry that is in that particular day. They have almost an exact knowledge of the amount of poultry to come the following day so they have the factors of supply.

The buyers are there with the full knowledge of the factor of demand of their slaughter houses, they know how the poultry is selling then. They then enter negotiations. The buyers have only taken on what they need at their terminals and their sole purpose in going on the floor of the Poultry Exchange is to confer with receivers who have sold them the goods early in order to arrive at what is considered a fair and just price for the different items listed in the live poultry market and they debate back and forth until finally they arrive at a point at which buyers express an entire willingness to pay a certain price for the goods which they had taken from the terminals, which the receivers are asking for the particular goods. When they come to that point, why, then I always consider it tantamount to an open market sale. I usually record whatever [fol. 1003] they agreed to buy and sell it at. Under date of September 19th, we quoted a price there on average heavy of 23 cents. That average heavy line is regarded by the entire trade of New York as a sort of basic price. All finer grades are sold at varying premiums. I indicate the premiums on the various finer grades if they are obtainable. I indicate there that average heavy sold at 23 cents, that the fancier grades sold at the premiums. I have no price for fowl, colored heavy. The price for fowl colored heavy that day is stated in the line which we call a star line, at the bottom, which says: "Sold at premiums, one to two cents and fancy heavy at an additional premium equivalent

to 26 cents." I do not know on that day commission men were selling colored fowls for 29 and 30 cents a pound. I would have put it in there if I had known it. I do not pretend to report all of the sales that are made. I have a report every day of the great majority of sales. The situation in live poultry is exactly analogous to any other commodity. When you get a firm market the question of quality largely disappears. It is a proposition where buyers are hungry for stock, they are willing to pay almost any price within reason to get supplies. Under those conditions where you have a firm market the range of values rapidly disappears, it is a very natural situation, so that on a firm market it very frequently occurs that all fowls are selling at the top price and all chickens are selling at the top price or very close to it. The top price that I have here for fowl will be equivalent to 26 cents. I might say in that connection that I have no doubt there would be some that would sell at 27 cents. The market on September 19th, 1931 was firm and by reason of the firmness of the market, fowl brought near the top price of 26 cents, or a possible 27 cents.

The next paragraph relating to express and truck refers to fowl and poultry, that comes in by express and by truck rather than by freight from nearby states mostly, and says "Demand for fancy stock was keen and receivers refused to sell except one and two cents advance over any premium quoted, a good many colored chickens being placed on that basis." That means this: That the chickens that come in [fol. 1004] from nearby states by express and trucks are the cream of anything probably produced in the United States. Much of that comes in from the New England States, New Hampshire, Massachusetts. It is selected fowl as a rule, no cull stock in it.

To begin with it is probably worth during that period of the year almost any price within reason because it is selected stock, it is the cream. In the second place, the receivers know the quality of that kind of goods. Thirdly, that they have the upper hand in selling that kind of goods, they charge accordingly. They usually in the fall of the year put that kind of stuff above anything, they can quote anything above the current premium, whether it is on the back page or cover or anywhere else.

The prices I have in this Producers' Price Current is a sort of guide that the receivers and the market men use for the purpose of agreeing on the price between themselves on which price they add the premiums if the market is firm or subtract premiums if the market is very sluggish. With this explanation: In order to arrive at some basis of value, even in the express poultry, after I examine or after I acquire the knowledge of sales of an average grade of colored fowl in the freight market, I go around until I can get hold of sufficient business on an average grade of express fowl to warrant making a quotation which has an indication of value for that kind of poultry. The receivers of that very fancy fowl will never sell that stuff at the basic price; they will sell it at one or two cents above anything that I may quote or anything that I may mention in the report. For instance, I might see in the market that this kind of fowl just sold at two cents or one cent premium above the quotation, now, follow me: This kind of fowl will then be billed out at a four cent premium. If I mentioned nothing about a premium on selected heavy colored fowl on September 19th in the Price Current, I knew nothing about it, but that would not indicate that there were no such sales because a number of those sales are done without any knowledge that I have so I cannot cover them. I [fol. 1005] recall that on September 19th the Jewish holidays began, and the commencement of the Jewish holidays creates an unusual demand for poultry. By reason of that unusual demand the market is much firmer than it ordinarily is for that fine grade of stuff, and very frequently there are premiums on the sale of the fine grades by the receiver to the market men over and above what I report. That firm condition exists around all of the Jewish holidays when there are frequently premiums over and above what I record in our prices. Around the holidays, there is an extra demand for poultry, largely for the fancy poultry.

Cross-examination.

By Mr. Rice:

The Witness: The market quotation for chickens, colored, average, on September 19th was 22 cents. The mar-

ket for chickens colored madium on September 17th was 19 cents. Of the poultry that comes into New York not over 80 to 85% comes by freight.

In the past three years, I would say that at least five per cent more poultry has come from nearby states. In 1928, according to my estimate about 90 per cent of the poultry came by freight.

[fol. 1006] COLLOQUY

The Court: Gentlemen, there is one matter we discussed partly but did not dispose of on Friday. Near the beginning of this trial the Government offered in evidence the testimony taken at the criminal trial as against the convicted defendants, not as proof in this case even against them, but merely as to the Government's contention at that time to supplement the judgment role by way of identification or elaboration of the issues that were involved in that case.

Mr. Kaufman: My understanding, if your Honor pleases, is that you would entertain an application by the Government to substitute the record on appeal in the Circuit Court of Appeals rather than the stenographic minutes.

The Court: If it were agreeable to the parties it could be done. It cannot be done except on stipulation.

Mr. Kaufman: Your Honor is admitting the testimony on appeal rather than the record itself for the very limited purpose?

The Court: For the very limited purpose.

Mr. Kaufman: We do not waive the right of our objection and exception.

It is the Government's offer in lieu of the Government's testimony, Exhibits 1 to 4, is that correct, Mr. Rice?

Mr. Rice: Yes, that is perfectly agreeable to the Government.

Mr. Kroppy: I object to the admission of this record on appeal or even the stenographic minutes.

The Court: My ruling for the purpose of the motion is that the testimony as set out in the record on appeal may be taken as a substitute for the stenographic minutes here.

For the very limited purpose and on the terms I have stated.

(Marked Plaintiff's Exhibit No. 7 in evidence.)

[fol. 1007] Mr. Rice: Exhibit No. 54 represents the amount of the purchases for the various weeks made by Rubin Weiner from Schenkman's market, from October 30, 1930, to February 13, 1931.

(Marked Plaintiff's Exhibit No. 54.)

Mr. Kroppy: If your Honor please, in connection with Defendants' Exhibits Z, A-1 to D-1 for identification, I also offer at this time the Government's brief dated November 30th, 1931, in this action entitled, "Probability of Resumption of Conspiracy" which is market Exhibit E-1 for identification.

The Court: Excluded.

Mr. Kroppy: I want the record to show the purpose of this offer of the exhibit in evidence. It is offered in connection with Exhibits Z to D-1 for identification inclusive of the purpose of showing that at the time of the motion that was made by the defendants to dismiss the original petition which was heard before Judge Mack on April 3rd, 1930, the question was raised at that time as to whether it was sufficient for the Government to prove in this case merely continuance of acts and practices on the part of some of the defendants or all of them without proof of the continuance of the conspiracy itself and of its existence at the time that this action was started and that the Government contended that that was all that was necessary for the Government to show and I contended to the contrary.

I contended that it was necessary for the Government to allege and prove that the conspiracy, alleged and described in the petition, was in existence and was continued from August 20th, 1928, to the time that this suit for injunction was started, and that there was a danger and a threat that the conspiracy itself would be continued after the filing of the suit.

I want to show that after the court heard these contentions and read the motion papers that he granted the motion to dismiss the original petition with leave to file an [fol. 1008] amended petition within ten days after the service of the order dismissing the original petition and that in effect his ruling was that the Government would have to file a petition alleging that the conspiracy alleged in the original petition was still in existence or was continued up to the time that the petition was filed and that there was

danger of it being continued thereafter or that there was a threat of it being continued thereafter. I want the record to show that I offer these exhibits, from Z to E-1 for identification separately in regard to this particular matter and secondly I offer them in connection with all the testimony, if your Honor wants to take such testimony showing the questions that were submitted at that time. I wish to note an exception to your Honor's ruling.

MOTIONS TO STRIKE

Mr. Kaufman: The defendants rest and I renew the motions made at the close of the Government's case, including the motions to strike out the testimony of various witnesses made at the close of the Government's case.

The Court: Overruled.

Mr. Kaufman: Exception.

Mr. Kroppy: I want to make a motion to strike out all the testimony and exhibits regarding the L. W. Credit Association and the Harlem and Bronx Board of Trade and the Live Poultry Dealers Protective Association and Live Poultry Slaughter House Association on the ground they have been shown to be separate enterprises which were formed by different groups of market men and their businesses and activities relate to intrastate commerce alone, without being connected in any way with the conspiracy described in the amended petition or with any overt acts charged as having been done in pursuance or in furtherance of said conspiracy.

I also move to strike all testimony out regarding interference in Newark, Passaic and other parts of New Jersey on the ground that such interference arose out of local controversies in New Jersey and concerned itself between persons residing in New Jersey and that none of the defendants market men or any of the other defendants named in the petition were in any manner connected with or implicated in such interference.

[fol. 1009] On the further ground that such interferences were not shown to have been committed in pursuance or in furtherance of any conspiracy to which defendant market men or any of the defendants were parties.

I also move to strike out all the testimony regarding interference with the sale and delivery of poultry by market men to retailers in New York on the ground that such interferences affected and related to intrastate commerce exclusively and did not show they were committed in pursuance or in furtherance of the conspiracy alleged in the amended petition or any conspiracy in restraint of interstate commerce to which the other defendants were parties.

I also move to strike out the testimony and exhibits regarding conversations and transactions between witnesses who were third parties, as to the existence of any conspiracy or combination among market men or any of the defendants or to their charging excessive or uniform prices by agreement, and as to interference in selling on the part of any market men to retail dealers on the ground that such statements and transactions are shown to have related to intrastate commerce only, that they were not overt acts made or done in pursuance of or in furtherance of the conspiracy alleged in the petition or of any conspiracy in restraint of interstate commerce and that they were not shown to have been made or done by co-conspirators and on the ground that they show merely the state of mind or the motives of the third parties which are not shown to have been created or produced by the conspiracy alleged in the amended petition or any other conspiracy among the defendants or that they were created or produced by any acts done on the part of the defendant market men or any of the other defendants alleged to have been part of the conspiracy alleged in the amended petition.

In order to be competent as an overt act it must be shown by other independent evidence that the third parties who made the statements or committed the acts were in fact co-conspirators with the defendants named in the amended petition and their own statements or their own acts stated to witnesses who testify in court are not sufficient to even make them conspirators in the sense that they were combined with the defendants named in the amended [fol. 1010] petition in this case, I make a motion to strike out all the testimony and exhibits relating to interferences, transactions and all enterprises in which any of the defendants may have been engaged after August 1928, or since at least the beginning of 1929 on the ground that none of the

testimony or exhibits tend to prove the existence or continuation of the conspiracy alleged in the amended petition since August, 1928; on the ground that none of this testimony or exhibits tends to connect in any way the defendant market men to any conspiracy subsequent to August, 1928, or at least the beginning of 1929 and on the further ground that it fails to connect any of the defendant market men with any interference or restraint of interstate commerce or with any interference with an interstate transaction in the sale or purchase or delivery of live poultry since August, 1928, by word or deed.

Those are my motions to strike out the testimony.

The Court: Denied.

Mr. Kroppy: Exception.

MOTIONS TO DISMISS

I renew all my motions to dismiss the Government's amended petition on all the grounds stated at the close of the Government's case and in addition I move to dismiss the amended petition on the ground that it fails to state facts sufficient to constitute a cause of action; on the ground that it shows on its face a want of equity, and on the ground that the allegations contained in the amended petition show that subsequent to August, 1928, the three organizations named in the amended petition, the Greater New York Live Poultry Chamber of Commerce and the two unions, Local 167 and the Schochtim Union existed and carried on their activities as separate and independent organizations without any privity existing between them or any two of them or at least that there was no privity between the Chamber of Commerce and its members, the defendant market men, with the unions or any of their representatives or delegates since August, 1928, and generally on the ground that there has been a total failure of proof by the Government of its case.

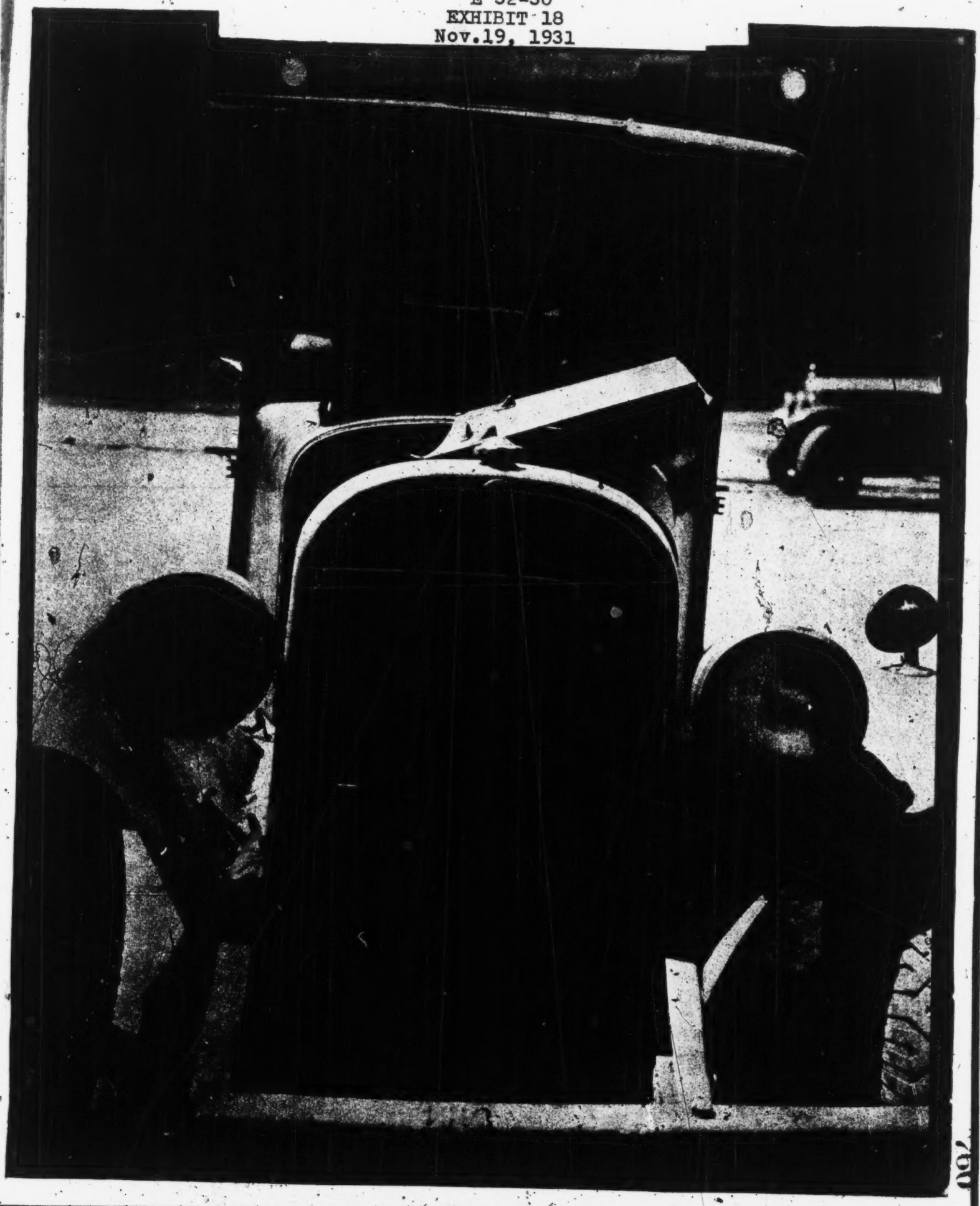
The Court: Denied.

Mr. Kroppy: Exception.

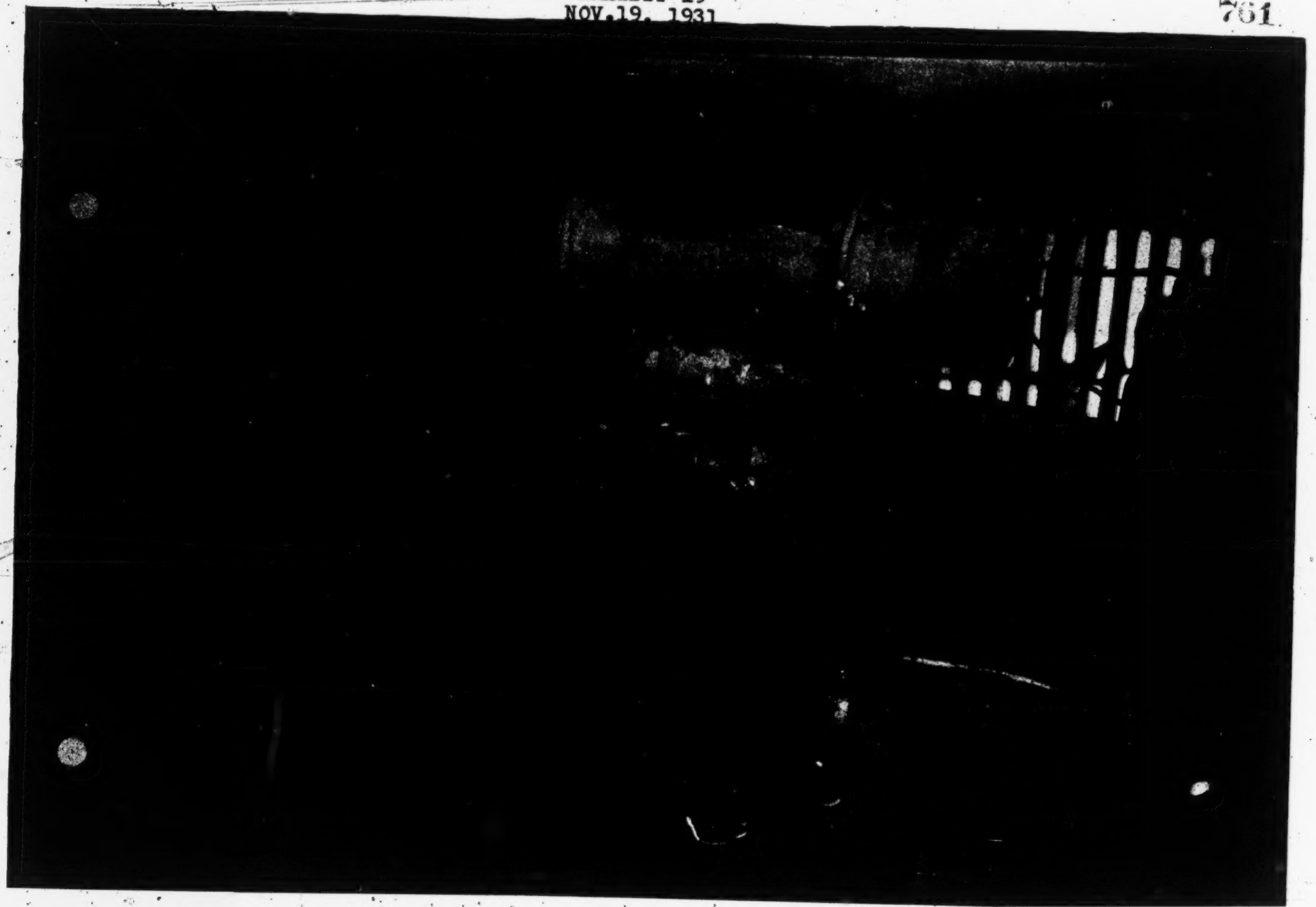
[fol. 1011] PLAINTIFF'S EXHIBIT 9

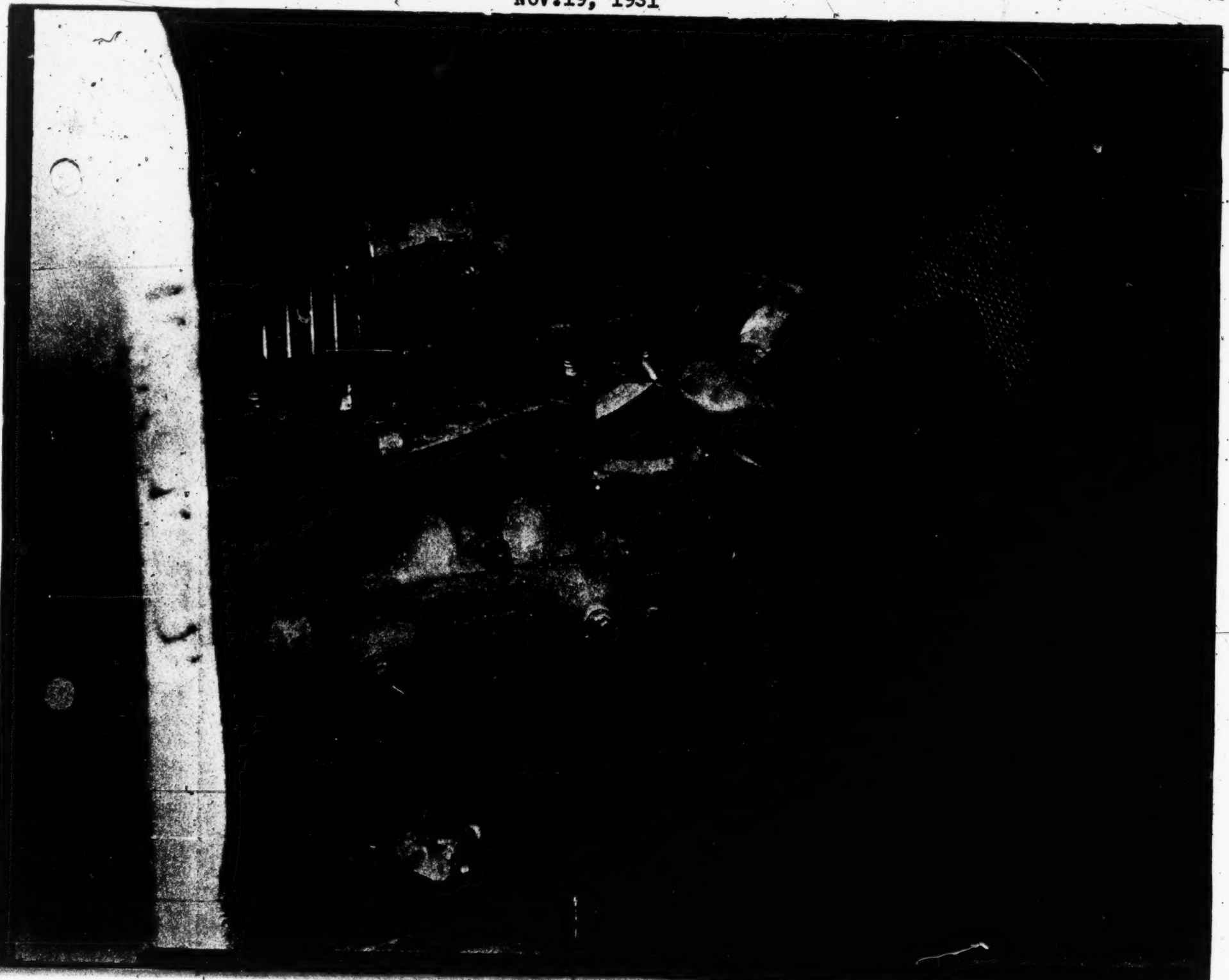
		2,000	3,000	4,000
Bronx	21½	430	645	860
Harlem	10	200	300	400
E. Side	16½	330	495	660
Brklyn	16	320	480	640
Brownsville	17½	350	525	700
Boro Park	18½	370	555	740
	100%	2,000	3,000	4,000
				5,000
				1,075
				500
				825
				800
				875
				925
				5,000

U.S.DIST.COURT,S.D.of N.Y.
E 52-30
EXHIBIT 18
Nov.19, 1931



U.S.DIST.COURT,S.D.of N.Y.
E 52-30
EXHIBIT 19
NOV.19, 1931





	①
Semels	100
Hugler	100
Adat	50
Thasiansky	100
Trenfatem	150
Wolf	350
Louis St	50
Pitt St	450
Heben	100
Wennik	175
Finkelstein	125
Plattkin	200
Mingmit	200
Weidling	200
	2350

Sent 200 ①

S	130
S	225
Boges	625
Aeksy	5
Jusin	75
Os	75
Mey	15
Bilinsky	175
Nuenberg	300
Thonezky	250
O	1030
Halfen	100
L WEDBERG	125
Mey	15
	2582
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	230

Presman	25
Thy	25
Cost	50
Finkelstein	125
DR	25
Hugler	50
Plattkin	200
Frenfatem	150
[illegible]	50
Thasiansky	100
Helen	100
Wolf	350
Pitt	475
Mingmit	200
Welhesky	200
	2125

Sent 43450 ②

S	130 ✓
Nuenberg	300 ✓
O	330 ✓
Boges	6250 ✓
Mehs	15 ✓
Aeksy	5 ✓
Brekfes	5 ✓
Thonezky	150 ✓
Jusin	75 ✓
S	225 ✓
O	700 ✓
Bilinsky	175 ✓
Weid	125 ✓
Halfen	100 ✓
	2397.50

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Hugben	50
Finkelstein	500
Trenfaten	125
DR	150 LW 50
Wolf	25
Plutkin	350
Sernils	200
Thiesonsky	100
Hben	100
Lewis	100
Pitt Jr	50
Wennick	500
Mungrich	175
LW	200
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Halten	1007
S	130
S	255
Nirenberg	300
O	3925
Mot	15
Jusum	75
O	700
Hongky	150
Bilinsky	150
LW	125
GALSTEIN	200

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Hugben	50
Finkelstein	125
Trenfaten	150 (20)
DR	25
Haben	100
Lewis	50
Aust	50
Trismon	50
Pitt Jr	475
Wolf	350
Mungrich	200
LW	200
Wennicky	175
Thiesonsky	100
Plutkin	200
	2325

Sent 634 (4)

Halten	112
Nirenberg	300
Biesenman Stochet	100
Nuger	5
Nissen	75
Bilinsky	150
O	39250
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S	225
S	130
LW	125
Mot	15
Hungky	150
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Hosomsky	125
Chas A	75
Semels	125
Heben	150
Louis St	75
Presman	25
Hug	50
Frenkhofer	225
Hugler	75
Finkelstein	200
Minzmik	100
Platkun	275
Minazmig	200
Pitt St	500
Wolf	350
Wennik	175
S W	200
	3125

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Halten	100
S	130
Mot	15
4 Wks Ors	60
S	225
O	700
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bags	6250
Horezky	150
Bilinsky	150
Rosenmon	100
Jusim	75
Nirenberg	200
L W	125
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Hosomsky	125
Chas A	75
Hug	50
Heben	150
Finkelstein	200
Hugler	75
Wolf	350
Louis St	50
Platkun	200
Frenkhofer	225
Presman	25
Wolf	150
Wennik	175
Minzmik	300
Pitt St	600
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Semels	75
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S	130
Mot	25
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bages	6250
Horezky	150
Bilinsky	150
Rosenmon	100
Jusim	75
Nirenberg	300
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DR	25
Semels	50
Heilig	100
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Lewis St	50
Thugben	150
Finkelstein	125
Wolf	350
Frenkfeten	150
Pitt St	475
Wennick	175
Moore	200
Weber	200
Katz	25
Plat	175
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	1300

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Rusenman	100
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Jusun	75
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Mot	15
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Bager	6250
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Thmezky	150
Bilinsky	150
Golstein	50
P	200
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Thesvinsky	100
Finkelstein	125
Henry	25
DR	25
Lewis St	50
Wolf	350
Heben	100
West	50
Bretton	175
Pitt	400
Thugben	50
Frenkfeten	150
Wennick	175
Menezwick	200
LW	200

(8)

Jusun	25
Golstein	50
Halfen	100
Ninenberg	250
Rusenman	100
O	700
O	330
Bager	6250
Thmezky	150
Bilinsky	150
S	105
Mot	15
Menn	10
S	25

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Au	50
Sem	50
P	400
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Hw	50
Fiven	150
Wen	175
SW	350
Pilat	200
Fin	150
X Mirez	200
LW	200

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Sem	305
Wr	625
Halken	110
Nuenberg	225
Brek	13
S	105
S	25
Sean	6250
Mg	25
Bilme	50
O	1030
Golstein	50
Jusin	75
Mey	30
Hanez	150

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Thesansky	100
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Thingber	50
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Nuenberg	25
Halten	100
Rosenmon	100
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S	25
Met	15
Mery	10
Honeysky	150
Bilinsk	150
Golstein	50
Jusin	75
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108

(11) 40 ⁰

Semler	100
Thiessmann	100
Haben	100
DR	25
Chast	50
Pitt St	300
Finkelstein	200
Wennitz	175
Minozmit	200
LW	200
Frenfaten	200
Wolf	350
Whitten	150

(11)

Halben	100
Nirenberg	300
Bilinsky	150
Thorezky	150
S	105
S	25
Mat	25
Jurun	75
Goldstein	50
Rosenmon	100
V	1030

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(12)

Haig	25
DR	25
Heben	100
FIN	100
PLAT	150
CHA	50
WOLF	350
COGLER	100
FREN	100
PITT St	350
FRENK	50
Wennitz	175
LW	200
Minozmit	200
Thosansky	85

2040

88 20 (12)

Halben	107
Nirenberg	300
Frankenstein Semmon	1120
S	105
Rosenmon	100
V	1007
Merrigan	10
Bilinsky	150
Thorezky	150
Jurun	75
Goldstein	50

2128 20

(13)

Rosanshe	100
Chost	50
Semile	100
Haben	100
Frenfaten	150
Kaz	25
DRY	25
Plaskin	150
Hugben	50
LW	200
Minzynsk	200
Pitt	350
Finkelstein	100
Wenick	175
	1775

Short 1116. Inc 6
58
Short. 1174.50

Helfen	100
S	105
Rosenmon	100
Kontsky	150
Belinsky	150
H Golstein	50
Jusim	75
O	1070
Mennig	10
	Exp 1810
	1775
	Short 35
	1174
	1209

(210)

SHORT 208 40

(14)

Rosansky	75
Chost	50
Haben	100
DR	25
Plaskin	150
Hugben	50
Kaz	25
Frenfaten	135
Pitt St	330
Wennick	175
L.W	200
Minzynsk	200
Finkelsten	100
	1615

Short 1209.

Halfen	100
S	105
Jusim	75
Kanezky	150
Belinsky	150
O	1070
Golstein	50
Mennig	10
Rosenmon	100
	1810
	1615
	Stor 205
	1209
	1414

(15)

Kosansky	100
Finkelstein	100
Chest	50
Semils	100
Haben	100
Platkin	150
Frenkatz	150
DR	25
Wennsky	175
Pitt St	320
Ch M	200
I W	200
	1670

Chest	Shr 1414
Semils	50
	100
Helfen	100
Kovezhe	150
Rosenmon	100
O	1070
S	105
Jusiw	75
Belinsky	150
Colstein	50
Merry	10
	1810
	1670
	140
	1414
	1554

(16)

Haben	305
Semils	100
DR	383
Lewis St	164
Frenkatz	334
Finkelstein	239 25
L W	300
Mirozmik	378 14
Kosansky	175 00
~~Pitt~~ Platkin	36 52
Pitt	450
Chest	109 15
Wolf	5 44
Wennsky	200

Shortage 1554

LW	
Wers	65
Demsky	225
Belinsky	100
O	150
S	1070
Hugber	105
Rosenmon	350
Jusiw	100
Kovezhy	75
Thely	337 50
Halton	75
Brill	100
36	50
Milewesky	50
Kirowling	25
Meni	300
Kaz	10
	175

Over 374.00

Galstein	100
Finkel	50
Bergenfeld	50
Hug	75
	3637.50

(17)

Kosowsky	140
Frenfeter	300
Finkelstein	230
DR	477
Louis Sfa	125
Walt	525
Chost	11005
Plotkin	300
Wernick	200
Pitt St	450
LVY	297
Wenzmik	300

Weiss	225
Nirenberg	300
Hugben	350
Halten	100
Bilinsky	150
Kovaszka	33750
Kely	95
Hug	250
Bergenfeld	50
Rosenmon	100
Augen	10
49 St	50
Galstein	100
Chely	10
Bruell	50
Milinsky	50
Mennig	20
O	1070
S	105

772

Short 238

Finkel	50
LW	65
Jusim	75
Demsky	100

(18)

Pitt St	450
Finkelstein	250
Thosandin	160
Chas	8701
Haber	220
Trentlafer	300
Plotkin	27215
Tennis	100
DR	450
LW	256
Wolf	5 14
Weinrich	175
Mirozinch	300

33

Mugen	90
Walter	100
Heby	75
Horezky	33750
Rosenmon	100
Bilinsky	150
36	50
Nirenberg	300
LW	65
Finkel	50
Goldstein	100
Jusim	75
Demsky	100
Weiss	225
Kugler	350
Kaz	250
Bergenfeld Brill	100
Milewsky	50

Short 283 –

O	1070
S	105
Bayes	30
47 St	25
Brandmeir	100

(12)

OR	525
Plutkin	31145
Haber	18368
Frenfafen	350
Chest	125
Glasansky	160
Pitt St	500
Finkelstein	225
Minozmtn	400
Wolf	550
4H	294
~~Minozmtn~~	~~400~~

Weiss	225
Bergenfeld	50
47 St	25
36 St	50
Bays	40
Bilinsky	150
Kugler	350
Rosenmon	100
Korezky	33750
Kelly	75
Halten	100
Damsky	100
Kay	250
Kirchberg	300
Hafer	75
Jusim	75
Brill	50
Mibesky	59

778

Short 167.36

LW	65
Fuchel	50
Goldstein	100
O	1070
S	105

20

Hosansky	150..	Wiegen	22
Oost	134 34	Meyer Wm	225
Chr Fenkelstein	250 ..	36 St	50
Howard	421 00	Bergenfeld	50
Hale Bro	190 58	Halter	10
Wernick	150 ..	Kugler	35
Plattin	271 ..	Lewis St	13
Mimoznik	300 ..	Rosenman	10
Frenfaten	334 ..	Hafer	7
Wernick	150 ..	Bilinsky	15
Lennels	100 ..	Brill	50
LW	298	Denisky	100
Walk	550	Ardy	10
Pitt	500	Menz	10
		47 St	25
		Thorezky	3375
		Niven	300
		Kaz	25
	4918 92	Kely	75

1/2

		Short	21 over
S	105	1554	
O	1070	238	374
Jurim	75	283	
Milofsky	50	167 36	
Gualstein	100	225.58	
W	165	2467.94	
Fridel	50	374	
Expenses	4024.50	2093.94	
Collected	3248.92	644.60 short	
Short	725.58	2738.54	
Pitt	500	8.22 over	
Short	225.58	2650.32	

127
125
55

(15) 8090 8000
8000
9000

Hosansky	175
Finkelstein	225
Trenfeter	325
Heber	200
Minnig Mk	450
DW	265
Platkin	325
OR	352
Cost	14490
Wolf	484
Pitt	500
	14 1 90

Wiener Expensing 22

36	50
Alfen	100
Heby	75
S	105
O	1070
Demsky	100
Belinsky	150
42	25
Weiss	225
Murphy	350
Lewis Ch	230
Rosenman	100
Jurim	75
Bruel	50
m Pat 3 (102)	250
Milowsky	50
Gualstein	100
Finkel	50
	3158

776

Pitt	500
Seminole	100
Finkelstein	275
Munzmik	500
Chast	191 72
Haber	190
Hosiandy	175
Platten	344
Trenfaten	350
Weidberg	292
Horvath	462
Fornier	250
	3629 72
Wolf	511
	4140 72

Weill	300
Trenfaten	350
Finkelstein	260
D.R	400
Pitt St	500
Platten	300
Chast	150
Haber Bros	140
Weidberg	260
Kasanstey	150
Wenick	100
Munzmik	500
	3110
Wolf & Hosiandy	300
	3410

	1070
Halten	100
Rosenmon	100
Louis St	230
Dingler	350
Weiss	225
Bilinsky	150
36 St	50
Damsky	100
Katz	250
Koretsky	337½
Kellett	75
Railroad	10
Schacht	65
Ben	50
47 St	25
Goldstein	100
Kuenberg	300
Affer	50
	3637 10

(1x1634

Semels	100	Alter	100
Halen Bros	140	Rosenman	100
Drydock	425	Koretsky	339 50
Kosovsky	150	Kelley	75
Chast	105	Belinsky	150
Platkin	290	Beigenfeld	50
L W	240	Brill	50
Wennick	100	36	50
Minczynski	350	Weiss	225
Wolf	610	47 St	25
Pitt	100	Damsky	100
	3000	Thaw	250
	1262	Gjalstein	100
		Ninenberg	300
over	748	Kuglen	350
			2262

Chast	100		
Wolf	424	Ninenberg	300
		Shoreshy	310
~~Platkin~~	200	36 St	50
Haben	191	Demsky	100
Kosovsky	125	Thaw	250
Drydock	400	Weiss	225
Ch. Muntzing	350	Halen	100
I Wedberg	250	Kelley	75
Pitt	500	Kuglen	350
	2540	Fundel	50
Ef	2140	Gjalstein	100
		Rosenman	100
over	400	Schot	130
			2140

[fol. 1030]

Exhibit 23

49—6

Sentences imposed on defendants in United States v. Greater New York Live Poultry Chamber of Commerce, before Honorable John C. Knox, December 16, 1929, following their conviction November 21, 1929, on the first count of the indictment

Greater New York Live Poultry Chamber of Commerce	$5,000 fine.
Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America	Sentence suspended. Probation 5 years
Official Orthodox Poultry Slaughterers of America, Inc.	Sentence suspended. Probation 5 years
Firestone, Carl	$500 fine suspended—4 weeks jail
Gold, Samuel	4 weeks in jail
Gordon, Morris	$1,000 fine—60 days in jail.
Herbert, Arthur	$500 fine suspended—8 weeks in jail. Probation 5 years
Herbert, Charles	$500 fine suspended—2 weeks in jail. Probation 5 years
Hirshon, David	$2,500 fine—4 months in jail beginning February 1, 1930.
Josselson, Morris	$150 fine—2 weeks in jail
Kaufman, David	$500 fine suspended—8 weeks in jail $50 to Morris Teitler
Keslin, Max	$500 fine suspended—10 days in jail
Koslow, Jacob	$750 fine—3 weeks in jail
Lipkin, Samuel	$750 fine suspended—2 weeks in jail. Execution stay of 60 days

Rosenstein, Julius Rosenstein, Sidney	$500 fine suspended—4 weeks in jail. Term in jail to be served in installments if requirements of mother demand it. Both Rosensteins to serve at different times
Rosenstein, Moe	$500 fine suspended—4 weeks in jail
Sahn, Samuel	$1,000 fine—3 months in jail
Shomer, Harry	Fine suspended—4 weeks in jail
Simon, Benjamin	Fine suspended—3 months in jail commencing February 1, 1930.

[fol. 1031]

Spatz, Louis	$1,000 fine—4 weeks in jail
Weidberg, Louis	$1,000 fine—4 weeks in jail
Weissler, Aaron	$500 fine—4 weeks in jail—suspended fine.
Azwolinsky, Morris	$500 fine—90 days suspended sentence. Probation 5 years
Berman, Herman	$500 fine—90 days suspended sentence. Probation 5 years
Bistretsky, Charles	$500 fine—90 days suspended sentence. Probation 5 years
Chast, Morris	$500 fine—suspended sentence of 3 weeks. Probation 5 years
Morris Damsky	$500 fine—90 days suspended sentence. Probation 5 years
Frank, Isidore	$1,000 fine—90 days suspended sentence. Probation 5 years
Frankfater, Jacob	$500 fine—90 days suspended sentence. Probation 5 years
Gerber, Morris	$1,000 fine—6 months suspended sentence. Probation 5 years
Gershowitz, Charles	Suspended sentence—5 years probation
Gross, Kalman	$1,000 fine—90 days suspended sentence. Probation 5 years

Haber, Hyman	$250 fine—suspended sentence. Probation 5 years
Haber, Isidore	$250 fine—suspended sentence. Probation 5 years
Harrison, Samuel	$750 fine—suspended sentence 90 days. Probation 5 years
Hellman, Morris	$500 fine—90 days suspended sentence. Probation 5 years
Herbert, Harry	Suspended sentence—Probation 5 years
Isaacson, Samuel	$500 fine—90 days suspended sentence. Probation 5 years
Kadin, Samuel	$100 fine and 60 days in which to pay—90 days suspended sentence. Probation 5 years.
Kaplan, Isaac	$500 fine—3 months suspended sentence. 5 years probation
[fol. 1032]	
Kassoff, Leo	Suspended sentence—5 years probation
Klieger, Morris	$1,000 fine—6 months suspended sentence. 5 years probation
Lax, Miekey	$200 fine—90 days suspended sentence. 5 years probation
Lepoff, Simon	$500 fine—90 days suspended sentence. Probation 5 years
Lipschitz, Isaac	$500 fine—90 days suspended sentence. Probation 5 years
Mamber, Samuel	$1,000 fine—$75.00 to Morris Teitler 4 months suspended sentence—Probation 5 years
Manne, David	$500 fine—90 days suspended sentence—5 years probation
Manne, Samuel	$500 fine—90 days suspended sentence—5 years probation
Mirotznik, Samuel	$750 fine—90 days suspended sentence—5 years probation
Newman, Abe	Suspended sentence—5 years probation
Nierenberg, Hyman	$500 fine—90 days suspended sentence. 5 years probation
Pepper, Abraham	$1,000 fine—$75.00 to Morris Teitler—4 months suspended sentence—Probation 5 years
Raby, Hyman	$1,000 fine—90 days suspended—5 years probation

Reisner, Jack	$500 fine—90 days suspended—5 years probation
Rosen, Max	$1,000 fine—3 months suspended—5 years probation
Schiller, Louis	$1,000 fine—90 days suspended—5 years probation
Scull, Joseph	$1,000 fine—90 days suspended—5 years probation
Shapiro, Kalman	Suspended sentence—5 years probation
Silverman, Samuel	Verdict of jury set aside
Simon, Benjamin	Suspended sentence—5 years probation
Simon, William	Suspended sentence—5 years probation
Steinberg, Aaron	$500 fine—90 days suspended—5 years probation

[fol. 1033]

Susnick, Paul	$500 fine—90 days suspended—5 years probation. Fine to be paid Friday at 4:00 P. M.
Susnick, Sidney	$500 fine—90 days suspended—5 years probation
Wernick, David	Suspended sentence—5 years probation
Wolas, Max	$500 fine—90 days suspended—5 years probation; 60 days to pay fine
Wolf, Abraham	$1,000 fine—90 days suspended—5 years probation
Yarmouth, Irving	$200 fine—90 days suspended—5 years probation; 60 days to pay fine

(This exhibit substituted for judgment roll, by stipulation.)

[fol. 1034]

EXHIBIT 24

Names listed below cover assignments of the Greater New York Live Poultry Chamber of Commerce for a period of one (1) year commencing January 7, 1929, until January 6, 1930, Inc.

Name	Address
Atlantic Live Poultry Co., Inc.	868 62nd St., Brooklyn, N. Y.
Berman Bros. Poultry M'kt, Inc.	2760 W. 17th St., Coney Island, N. Y.
Bath Beach Live Poultry M'kt, Inc.	8687 18th Ave., Brooklyn, N. Y.
Beachview Live Poultry M'kt, Inc.	6114 16th Ave., " "
Berkshire Live Poultry M'kt, Inc.	6101 15th Ave., " "
Bloom, A., Inc.	741 E. 140th St., New York City
Burg, Isaac E.	86 Hamilton Ave., Brooklyn, N. Y.
Berkowitz & Finkel	149 No. 9th St., " "
Bensonhurst Live Poultry Corp.	221 Bay 37th St., " "
Blythebourne, L. P. M'kt, Inc.	1106 60th St., " "
Bronx Poultry Co. (D. Grossman)	1924 West Farms Rd., Bronx, N. Y.
Casanovia Live Poultry M'kt, Inc.	679 Timpson Place, " "
Cohen, Max (Yorkville P. P. Co.)	419 E. 107th St., New York City
Church Ave. Live Poultry Co.	3823 13th Ave., Brooklyn, N. Y.
Danziger, Dave	730 Park Ave., " "
Dworkin & Blumenfeld, Inc.	539 Snedecker Ave., " "
Etra & Son, L. P., Market, Inc	138 Watkins St., " "
Emerson, L. P., Co, (Benj. Dinerman)	92 Emerson Place, " "

EXHIBIT 24—Continued

Name	Address
Frankfater Brothers	408 E. 3rd Street, New York City
F. G. T. Live Poultry M'kt, Inc.	1587 Bathgate Ave., Bronx, N. Y.
Frank, I.	1927 West Farms Rd., " "
Finkelstein, Chas.	419 East 3rd St., New York City
Flatbush Live Poultry M'kt, Inc.	1426 39th Street, Brooklyn, N. Y.
Frisman & Azwolinsky	111 Thatford Ave., " "
Friedlander, M.	2962 Park Avenue, New York City
Franzel Poultry Co., Inc.	464 Rockaway Ave., Brooklyn, N. Y.
[fol. 1035]	
Ft. Hamilton L. P. Market, Inc.	3716 Ft. Hamilton P'kway, Brooklyn, N. Y.
Glantz, Max	1347 39th Street, " "
Gordon & Lipman	407 Hegeman Ave., " "
Gerber, Louis	75 Eckford Street, " "
Gelvin Poultry Co. (I. Glass)	73 West 144th Street, New York City
Grand Street L. P. Corp.	607 Grand Street, " " "
Gold, Max	324 Melrose Street, Brooklyn, N. Y.
" Louis	358 Clarkson Street, " "
" Leo	1111 Flushing Avenue, " "
Gordon Brothers	546 East N. Y. Avenue " "
Gross, K., Inc.	967 Longfellow Avenue, Bronx, N. Y.
Gordon Poultry Co., Inc.	276 Junius Street, Brooklyn, N. Y.
Garber & Oster	839 Rockaway Ave., " "

H & S Poultry Co., Inc.	600 Whitlock Ave., Bronx, N. Y.
Horenstesn & Spatz, Inc.	2030 LaFontaine Ave., " "
Haber Brothers	423 East 33rd St., New York City
Howard Live Poultry Co., Inc. (Branch)	457 Thatford Ave., Brooklyn, N. Y.
" "	1401 Locust Ave., " "
" "	160 Avenue "D" New York City
Azwolinsky, Barney	532 E. 137th St., " " "
Hoffman Brothers	211 No. 4th Street, Brooklyn, N. Y.
Hasenfratz, D. & Son	New Lots Rd. & Warwick St., Brooklyn, N. Y.
Harrison Live Poultry M'kt, Inc.	2846 21st St., Coney Island, N. Y.
Hellman, Morris L.	271 Powell Street, Brooklyn, N. Y.
Hirshon, Dave	301 Powell Street " "
Ideal Live Poultry M'kt, Inc.	211 West 64th Street, New York City
Irving Poultry Co., Inc.	349 Jefferson Ave., Brooklyn, N. Y.
Park Live Poultry Market, Inc.	211 Third Ave., " "
Kadin, Sam	840 Alabama Avenue, " "
Kings, L. P. Market, Inc.	910 Quentin Road, " "
Koslow & Miller	354 Junius Street, " "
Kleinman, Abram	250 Richmond Street, " "

[fol. 1036]

Yorkgate L. P. M'kt (Kaplan Max)	526 E. 80th Street, New York City
Katz, D & M	343 Stanton Street, " " "
Kosansky, H.	251 South Street, " " "

EXHIBIT 24—Continued

Name	Address
Loketz & Sons, Inc.	22 Lorimer Street, Brooklyn, N. Y.
Mamber & Peppet	366 Wallabout St., " "
Midwood Live Poultry M'kt, Inc.	2256 Nostrand Ave., " "
Monroe Poultry Co., Inc.	316 Jackson Ave., Bronx, N. Y.
Marotznik, Louis	873 Liberty Ave., Brooklyn, N. Y.
Mintz & Krasilnick	274 Belmont Ave., " "
Morris Ave. L. P. M'kt (Louis Felts)	653 Morris Ave., Bronx, N. Y.
Mirotznik, Rosenberg & Steinberg	519 Water Street, New York City
109th St., Live Poultry M'kt, Inc.	407 E. 109th St., " " "
121st St. Live Poultry M'kt, Inc.	411 E. 121st St., " " "
137th St. Live Poultry M'kt, Inc.	19 E. 137th St., " " "
Perrick Bros.	401 E. 101st St., " " "
Prospect Poultry Co., Inc.	1737 Prospect Pl., Brooklyn, N. Y.
Podberesky Bros., Inc.	85 Navy Street, " "
Panesh B. (Westchester L. P. M'kt)	620 Westchester Ave., Bronx, N. Y.
Zion Poultry Co. (Branch above)	92 Southern Blvd., " "
Passon & Co.	881 41st Street, Brooklyn, N. Y.
Plotkin & Zarkin	35 West 144th St., New York City
Plotkin & Zimmering	510 E. 20th St., " " "
Pitt St. Live Poultry M'kt, Inc.	205 Delancey St., " " "
Rosen Live Poultry Co., Inc.	1834 Webster Avenue, Bronx, N. Y.
Romaner, M., Inc.	419 East 104th St., New York City

Reznick, I.	272 Sutter Avenue, Brooklyn, N. Y.
Rubin, Harry	44 Berriman St., " "
Sahn, M. & Son, Inc.	614 Flushing Avenue, " "
Schaier & Glazer	420 E. 110th Street, New York City
Schiller & Levy	413 E. 93rd Street, " " "
Simon Wm., Inc.	320 E. 110th Street, " " "
Sokoloff & Siegel, Inc.	226 E. 149th Street, " " "
Siegel, M.	417 E. 136th Street, " " "

[fol. 1037]

Sunset Live Poultry M'kt, Inc.	274 59th Street, Brooklyn, N. Y.
Sorkin Bros., Inc.	2993 Atlantic Ave., " "
Steuer Poultry Co., Inc.	661 Driggs Avenue, " "
Scull, Jos., Inc.	2776 E. 14th St., " "
Skloot Live Poultry M'kt, Inc.	150 Hamilton Ave., " "
Seewald & Fertig	236 Greenpoint Ave., " "
Semmel, Ed.	611 E. 18th Street, New York City
S & K Poultry Co., Inc.	4612 3rd Avenue, Bronx, N. Y.
Taxel, Meyer	60 Columbia St., Brooklyn, N. Y.
Tremont L. P. Co., Inc.	2012 Brons Street, Bronx, N. Y.
Taits, B., Inc.	269 Powell Street, Brooklyn, N. Y.
Uneeda Live Poultry M'kt, Inc.	6403 7th Ave., " "

EXHIBIT 24—Continued

Name	Address
Usim, Joe	2720 West 15th St., Coney Island, N. Y.
Van Nest Live Poultry M'kt, Inc.	510 Van Nest Ave., Bronx, N. Y.
Webster Live Poultry Corp.	1785 Webster Ave., " "
Winkler & Dimant, Inc.	1596 Inwood Avenue, " "
Weinstein Live Poultry Corp.	454 Thatford Avenue, Brooklyn, N. Y.
West End Live Poultry M'kt	1561 63rd Street, " "
Winkel, Albert L. Corp.	428 E. 103rd Street, New York City
Wernick, Ike	474 Water Street, " " "
Weidberg & Son	226 South Street, " " "
Wolfe Poultry Co.	107 Tompkins Street, " " "

[fol. 1038] EXHIBIT 25

Payments Made to Greater N. Y. Live Poultry Chamber of Commerce by Bernstein & Sons, Inc.

Year	Month		How paid	Amount
1926	November	18	By Check	$675.30
"	"	25	" "	1418.10
"	December	2	" "	1455.00
"	"	9	" "	1458.70
"	"	16	" "	1517.80
"	"	23	" "	1660.30
"	"	30	" "	1612.50
1927	January	6	" "	1765.30
"	"	13	" "	1019.20
"	"	20	" "	1556.90
"	"	27	" "	1469.90
"	February	3	" "	1449.10
"	"	10	" "	1536.70
"	"	17	" "	1513.80
"	"	24	" "	1458.20
"	March	3	" "	1400.40
"	"	10	" "	1590.10
"	"	17	" "	1494.90
"	"	24	" "	1482.90
"	"	31	" "	1591.80
"	April	7	" "	1469.30
"	"	14	" "	1391.90
"	"	21	" "	1474.80
"	"	28	" "	2309.20
"	May	5	" "	1669.30
"	"	12	" "	1512.40
"	"	19	" "	1550.00
"	"	26	" "	1493.30
"	June	2	" "	1563.80
"	"	9	" "	1496.30
"	"	16	" "	1673.90
"	"	23	" "	1704.40
"	"	30	" "	1645.60
"	July	7	" "	1648.60
"	"	14	" "	1676.30
"	"	21	" "	1563.30
"	"	28	" "	1620.50
"	August	4	" "	1588.30
"	"	11	" "	1525.60
"	"	18	" "	1531.00
"	"	25	" "	1091.90
"	Sept.	1	" "	2016.10
"	"	8	" "	1686.50
"	"	15	" "	1715.70
"	"	22	" "	1963.50
"	Oct.	5	" "	2384.10
"	Sept.	29	" "	1751.60
"	Oct.	12	" "	2146.60
"	"	20	" "	2224.40
"	"	27	" "	2189.40
"	November	3	" "	1828.90
"	"	10	" "	1754.60
"	"	16	" "	934.10
"	"	23	" "	2303.70
"	December	1	" "	1630.90

[fol. 1039]

Year	Month		How Paid	Amount
1927	December	8	By Check	$1976.70
"	"	15	" "	1761.30
"	"	22	" "	1703.10
"	"	29	" "	1629.80
1928	January	5	" "	1838.20
"	"	12	" "	1698.20
"	"	19	" "	1459.80
"	"	26	" "	1497.30
"	February	2	" "	1537.50
"	"	9	" "	1444.50
"	"	16	" "	1548.10
"	"	23	" "	1564.80
"	March	1	" "	1404.30
"	"	8	" "	1519.10
"	"	22	" "	1489.60
"	"	29	" "	1542.10
"	April	5	" "	1523.50
"	"	12	" "	1989.10
"	"	19	" "	1791.80
"	"	26	" "	1447.00
"	May	3	" "	1413.20
"	"	10	" "	1357.00
"	"	17	" "	1386.80
"	"	24	" "	1290.30
"	"	31	" "	1537.10
"	June	7	" "	1261.30
"	"	14	" "	1455.50
"	"	21	" "	1448.80
"	"	28	" "	1372.80
"	July	5	" "	1567.90
"	"	12	" "	1360.20
"	"	19	" "	1428.10
"	"	26	" "	1342.20
"	August	2	" "	1213.10
"	"	9	" "	1480.10
"	"	16	" "	1287.00
"	"	23	" "	1330.50
"	"	30	" "	1494.40
"	September	6	" "	1325.30
"	"	13	" "	1564.10
"	"	20	" "	1500.60
"	"	27	" "	1860.90
"	October	4	" "	2087.30
"	"	11	" "	1771.20
"	"	18	" "	1579.90
"	"	25	" "	1642.90
"	November	1	" "	1680.30
"	"	8	" "	1442.90
1929	January	17	" "	346.30
"	"	24	" "	674.15
"	"	31	" "	898.30
"	February	7	" "	1168.60
"	"	14	" "	1133.70
"	"	21	" "	1132.80
"	"	28	" "	1117.75
"	March	7	" "	1210.90
"	"	14	" "	1034.20
"	"	21	" "	1035.10
"	"	28	" "	1183.30
"	April	4	" "	1129.60
"	"	11	" "	1022.95

Year	Month		How Paid	Amount
1929	April	18	By Check	$967.80
"	"	25	" "	1056.30
"	May	2	" "	1459.70
"	"	9	" "	1449.00
"	"	16	" "	808.10
[fol. 1040]				
1929	May	23	By Check	1083.10
"	"	31	" "	991.40
"	June	6	" "	886.00
"	"	13	" "	1225.00
"	"	20	" "	1141.70
"	"	27	" "	916.90
"	July	3	" "	1116.20
"	"	11	" "	881.90
"	"	18	" "	1016.00
"	"	25	" "	688.10
"	August	1	" "	946.10
"	"	8	" "	932.70
"	"	15	" "	1349.20
"	"	22	" "	892.50
"	"	29	" "	1237.30
"	September	5	" "	1002.90
"	"	12	" "	1060.10
"	"	19	" "	1207.40
"	"	26	" "	1329.50
"	October	3	" "	1308.00
"	"	10	" "	1201.40
"	"	17	" "	1427.00
"	"	24	" "	1614.60
"	"	31	" "	1894.60
"	November	7	" "	1285.40
"	"	14	" "	1171.30
"	"	21	" "	1204.90
"	"	28	" "	1167.30
"	December	5	" "	1183.70
"	"	12	" "	1286.10
"	"	19	" "	1270.20
"	"	26	" "	1148.70
1930	January	2	" "	1210.40
"	"	9	" "	839.10
	Total			$220,750.45

[fol. 1041] EXHIBIT 26

10c Members of the Live Poultry Dealers Pro. Association for a Period of One (1) Year and a Few Cover Two (2) Years, Commencing 11/15/30—11/16/31, Inc.

Name	Expiration date of contracts
Astoria L.P. Co. (I. Stein)	11/16/31
Antzis Nathan	11/16/31
Adelman N.	11/16/31
Arotzky Brothers	11/16/31
Ave. "Y" L.P. (B. Novi)	9/30/31

Name	Expiration date of contracts
Ashland P. Corp. (T. Lucite)	4/13/32
Abbedessa F. (45th St. L.P.M'Kt)	11/30/31
Brookside L.P. M'kt (DiSalva S.)	11/16/31
Baskin Max	11/16/31
Bernstein's Poultry Co	11/16/31
Brown Isaac	11/16/31
Bergenfeld Chas	11/16/31
Blick S. . . . . M'kt	11/16/31
Broadway L. P.	11/16/31
Bass Poultry Co	11/16/31
Brown Harry	3/31/31
Baron Chas	11/14/31
Blythebourne P. M'kt (H. English)	6/29/31
Bontempi Joseph	4/30/31
Bath Beach L. P. M'kt (L. Schenkman)	2/27/32
Ciavarella P. (Corona L. P. M'kt)	11/16/31
Caresi & Partensi	11/16/31
Cea William	11/16/31
Cohen A	11/16/31
Cohen & Glasberg	11/16/31
Cea Rocco	3/31/32

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Church Ave. P. Co	12/14/31
Columbia Poultry Co. (R. Bono)	11/16/31
Cohen Isaac (formerly Joseph Banco)	11/16/31
Connova S. (Ashburton L. P.)	3/31/31
Davidson & Rot. (Old Reliable L. P.)	11/16/31
DeNigris Rocco	11/16/31
D'Amore A	11/16/31
DeSalvo S. (Italian L. P. M'kt)	11/30/31
Edelstein S	11/16/31
Emerson L. P. M'kt (B. Dinerman)	3/31/32
Eighteenth Ave. L. P. (Fiumefrede Bros.)	11/16/31
Etra Simon	6/30/31
East N. Y. L. P. M'kt (formerly Rivlin & Edelman)	11/16/31
Forsmith B. (Lexington L. P. M'kt)	11/16/31
Fein M. E	11/16/31
Fagin Theodore	11/16/31
Feldman S	11/16/31
Falce Chas	11/16/31
Fifteenth Ave. L. P. M'kt (S. Pietro)	11/16/31

Name	Expiration date of contracts
Fassano D	11/16/31
Feldman Sam	3/31/32
Frost St. L. P. Market	11/16/31
Furci Dominico	7/31/31
Franks Live Poultry M'kt, Inc	12/ 5/31
Feldman S. & Son	12/14/31
Geloff Harry	11/16/31
Gelb & Einhorn	11/16/31
Gabin Harry	11/16/31
Goldstein & Co	11/16/31
Glassman Sol	11/16/31
Goldberg S	11/16/31
Goldman S	11/16/31

[fol. 1043]

Glassberg Bernard	11/14/31
Gold Leo	3/31/32
" Louis	3/31/32
" Max	3/31/32
Gross & Sternberg	6/ 8/31
Gordon K. (Ozone Park L. P. M'kt)	5/16/31
Gerber Louis	9/14/31
Goldberg H	4/30/32
Hausman & Dorfman	11/16/31
Hillman Samuel	11/16/31
Hempstead L. P. M'kt	7/13/31
Haber Brothers	12/14/31
Jaffee & Cohen	11/16/31
Jaffee Max	11/16/31
Jeadlicka's L. P., Inc	11/16/31
Joselson & Safner	11/16/31
Kassak A	11/16/31
Kowalsky Brothers	11/16/31
Kaplan & Greenberg	11/16/31
Kowalsky L	11/16/31
" J. H	3/31/32
" J. (York L. P. M'kt)	3/31/32
" Max	3/31/32
Kaplan J	1/14/32
Kaplan & Gold	1/31/32
Krasilnick H	11/16/31
Laub Joseph	11/16/31

Name	Expiration date of contracts
Lokietz & Sons	11/16/31
LaBarbara Thos	11/16/31
Livoti G. M	11/16/31
" Bros	11/16/31
" P	11/16/31
Laqua Philip	6/22/31

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Lerman Louis	11/16/31
Mandel B	11/16/31
Mazzeo Lucio	12/14/31
Miano & Sons	11/16/31
Milavsky L	11/16/31
Milavsky Philip	11/16/31
Mazzeo Brothers	11/16/31
Mines Joe	11/16/31
Mamoroneck Ave. L. P. (L. Seeb)	11/30/31
Mantel & Greenberg (Taylor St. L. P.)	1/31/32
New Lots L. P. M'kt	11/16/31
Old Reliable L. P. M'kt	12/31/31
Penzavechia S	11/16/31
Papish A	11/16/31
Piccolo S	11/16/31
Pellegrino & Miono	11/16/31
Posteraro Jack	11/16/31
Pleasant Live P. Co	4/30/31
Piestromartire C	11/16/31
Perrick Brothers	1/14/32
Park L. P. Co. (Kantrowitz T.)	7/25/31
Protaz Max	3/26/32
Queens Live Poultry Market	11/16/31
Ravenswood L. P. M'kt	11/16/31
Reid Wm. J	11/16/31
Rainisch Wm	11/16/31
Rubinstein & Gelbutch	11/16/31
Russo Chas	11/16/31
Rimer & Grassgreen	11/16/31
Roth Jos	11/16/31
Rodney St. L. P. Market	11/16/31
Rubin Brothers	11/16/31
Romano James	11/16/31

[fol. 1045]

Name	Expiration date of contracts
Rifkin Brothers	11/16/31
Robins A. (9th Ave. L. P. M'kt)	11/16/31
Rosebank L. P. (Santaniello C.)	11/16/31
Ritter Louis	3/31/32
Renna Ralph	9/30/31
Rosenstein Milton H	12/14/31
Rosen & Wilkin	12/14/31
Sorkin Brothers	11/16/31
Schenkman Brothers	11/16/31
So. B'klyn Poultry Co	11/16/31
Safran Herman	11/16/31
Scarano G	11/16/31
Senowitz Chas	11/16/31
Seewald H. (Majestic L. P.)	11/16/31
Spotless L. P. M'kt	11/16/31
Strauss & Kramer P., Inc	11/16/31
Seewald & Fertig	3/31/32
Schiller & Joselson	3/31/32
Skloot George J	3/31/32
Superior P. M'kt (Goldowitz Bros.)	5/16/31
Spitalnik Louis	11/16/31
Sunset L. P. M'kt, Inc	12/31/31
Steuer Poultry Co	4/26/31
Tartazky Brothers	11/16/31
" Louis	11/16/31
" George	11/16/31
Taxel M	11/16/31
Tucker P	11/16/31
Tepper L	11/16/31
Tannenbaum A. H	2/17/32
Union St. Poultry M'kt	11/16/31
Vilog M	11/16/31
Wallack & Kranz	11/16/31

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Weiner & Zorn	11/16/31
Wakefield L. P. Market	11/16/31
Weinstock Paul	11/16/31
Westchester L. P. M'kt	11/16/31
Woodside L. P. M'kt	11/16/31
Winkel A. L. Live P. Corp	5/11/31

Name	Expiration date of contracts
33rd St. & 20th Ave. L. P. M'kt	3/31/32
West End L. P. M'kt (Dunn & Lischter)	8/19/31
Yedwabne & Rubinstein	11/16/31
Yezzi & Renna	11/16/31
Yorkgate L. P. Corp. (Kaplan Max)	11/16/31

E. Side Customers

Binder Morris	11/16/31
Katz M	3/31/32
Kosansky Bros	11/31/31
Mirotznik Ch	11/16/31
Pressman A	3/31/32
Plotkin & Wolfson	12/31/31
Yuen Roy	3/31/32
Wisotsky I	3/31/32
Weidberg Louis	11/16/31
Wernick I	11/16/31

$10 Weekly Members

Atwater Live Poultry Co	11/31/31
Atlantic L. P. Co	12/14/31
Beachview L. P. Market	12/14/31
Gerber Morris	12/14/31
Howard L. P. Co., Inc	11/31/31
Hoffman Brothers	11/31/31
Harrison Live Poultry Co	12/14/31

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Irving Poultry Co	11/31/31
Midwood Live Poultry Co	12/14/31
Oster Meyer	12/14/31
137th St. L. & D. Poultry M'kt	12/14/31
Podberesky Brothers, Inc	11/31/31
Prospect Poultry Co	12/14/31
Rubin Harry	12/14/31
Schairduck L. P. Co	11/31/31
Scull Joseph	12/14/31
Siegel M	12/14/31
Taits B	12/31/31
Weidberg & Isaacson	12/14/31

Addresses omitted. See Stipulation.

[fol. 1048] EXHIBIT 27

Names listed below cover assignments of the Live Poultry Dealers Protective Ass'n of N. Y. & Vicinity for a period of one (1) year, commencing November 16, 1929, until November 15, 1930, inc.

Arotzky Brothers
Stein, I. (Astoria L. P. Co.)
Antzis Brothers
Adelman Nathan
Antler, Morris
Brookside Live Poultry M'kt
Baskin, Mas
Bernstein, N.
Bass, Philip
Bergenfeld, Chas.
Brown, Isaac
Bone, R.
Blick, Sam
Binder, Morris
Bayes, Jacob
Broadway Live Poultry M'kt, Inc.
Cohen A. (Yonkers L. P. M'kt)
Cea, William
Chaplowitz, Peter
Ciavarella & Marinaro
Caroni & Partemi

[fol. 1049]

Clementi Maria
Cannova S.
DeNigris, Rocco
Davidson & Rothenberg (Old Reliable)
Deutch & Sobelson
D'Amore, Antonio
Edelstein, Sam
Fourteenth Ave. L. P. Market
Forsmith, Benjamin
Fein, M. E.
Fagin Theodore
Feldman, Sam
Feldman, R.
Falco, Chas.
Fifteenth Ave. L. P. Market
Fassano, Dominico
Gelof, Harry (112th St. L. P.)
Gelb & Einhorn
Gabin, Harry
Goldstein & Co.
Glassman, Sol
Goldman, Sol
Goldberg, Sam
Glenwood Rd. Poultry M'kt
Gallello Brothers
Heights Live Poultry Co.
Hausman & Dorfman
Jaffee & Cohen
Jaffee, Max
Jackson Live Poultry Market
Jeadlicka Live Poultry M'kt
Kassak Celia
Kowalsky Brothers (Harry)
Kaplan & Greenberg
Krasilnick, Harry
Kaplan & Gold
Laub, Joseph A.
Lokietz & Sons, Inc.
LaBarbara Thomas
Livoti, Guisepps
Livoti, Guisepps
Livoti Live Poultry M'kt, Inc.
Lerman, Louis
Mandel B.
Markowitz, H.
Markowitz & Michaels
Morgenbesser, Nathan
Mines Joe
Milavsky, Philip
Mazzeo, Luccio

Milavsky, L.
Miano & Sons
Mione & Pellegrino
Mt. Vernon Live Poultry Market
Mazzeo, Brothers
New Brighton Live Poultry Market
New Lots Live Poultry M'kt
Penzevachia Salvatore
Pack, Ben
Papish A. & Son
Piccolo, Slavatore
Pollack & Cobler (Square L. P. Market)
Powell & Lefkowitz
Posteraro Jack
Queens Live Poultry Market
Ravenswood Live Poultry Market, Inc.
Reid, W. J. (Knickerbocker P. Market)
Rainisch, Wm.
Rubinstein & Gelbutch
Rifkin H. & M. Woloshin
Rivlin & Edelman
Russo Chas.

[fol. 1050]

Rimer & Grassgreen
Roth, Joseph
Reinhart & Berkowitz
Rodney Live Poultry Market
Rubin Brothers
Romano, James
Spina Carmina
So. Brooklyn Poultry Corp.
Safron, Herman
Scarano, Gerri
Spitalnick (Riverdale L. P. Market)
Senowitz, Chas.
Tatazky, Louis M.
Tatazky, George
Tannenbaum, Alex
Taxel, Meyer
Union St. Live Poultry M'kt
Velog, M.
Wisotsky, Irving
Wallack & Krauz
Weiner, Davis
Wiener & Zorn
Wakefield Live Poultry Co.
Weinstock, Paul
Woodside Live Poultry M'kt
Westchester Live Poultry Co.
Yedwabne & Rubinstein
Yezzi & Renni

Assignments Commencing April 1, 1930, Until March 30th, 1931

Ashland Live Poultry M'kt (Tony Lucito)
Brown Harry (Queensboro L. P. Market)
Frost St. Live Poultry M'kt
Katz M.
Kleinman, Abram
Ritter, Louis
Seewald & Fertig
Strauss, M.
Santaniello, Dan
33rd St. & 20th Ave. L. P. Market
Wisotsky, I.
Yuen, Roy
Baron C. (From 5/1/30—4/30/31
Pietromartiro C. (From 7/1/30—6/30/31
Steuer William (From 7/1/30—6/30/31)
Goldberg Harry (From 7/1/30—6/30/31)
Eighteenth Ave. L. P. (From 7/1/30—6/30/31)

Addresses omitted. See stipulation.

[fol. 1051]

EXHIBIT 28

Payments Made to Live Poultry Dealers Protective Association of N. Y. & Vicinity by Bernstein & Sons, Inc.

Year	Month		How Paid		Amount
1928	December	3	By Check		$224.60
"	"	6	"	"	215.80
"	"	13	"	"	404.40
"	"	20	"	"	277.00
"	"	27	"	"	306.20
1929	January	3	"	"	361.10
"	"	10	"	"	376.10
"	"	17	"	"	357.00
"	"	24	"	"	240.90
"	"	31	"	"	311.90
"	February	7	"	"	247.30
"	"	14	"	"	251.70
"	"	21	"	"	261.80
"	"	28	"	"	269.40
"	March	7	"	"	227.20
"	"	14	"	"	233.20
"	"	21	"	"	250.00
"	"	28	"	"	255.00
"	April	4	"	"	232.30
"	"	11	"	"	349.70
"	"	18	"	"	256.30
"	"	25	"	"	237.60
"	May	2	"	"	230.10
"	"	9	"	"	350.00
"	"	16	"	"	233.80
"	"	23	"	"	259.80
"	"	30	"	"	212.60
"	June	6	"	"	238.80
"	"	13	"	"	230.80
"	"	20	"	"	225.70
"	"	27	"	"	246.60
"	July	5	"	"	250.20
"	"	11	"	"	601.70
"	"	18	"	"	386.90
"	"	25	"	"	298.10
"	August	1	"	"	549.20
"	"	8	"	"	315.10
"	"	15	"	"	333.00
"	"	22	"	"	287.30
"	"	29	"	"	337.20
"	September	5	"	"	274.00
"	"	12	"	"	312.40
"	"	19	"	"	328.10
"	"	26	"	"	311.60
"	October	3	"	"	421.80
"	"	10	"	"	344.70
"	"	17	"	"	316.00
"	"	24	"	"	357.50
"	"	31	"	"	334.00
"	November	7	"	"	297.30
"	"	14	"	"	361.30
"	"	21	"	"	354.50
"	"	28	"	"	332.75
"	December	5	"	"	333.75
"	"	12	"	"	529.95
"	"	19	"	"	388.20
"	"	26	"	"	354.45
1930	January	2	"	"	362.25

[fol. 1052]

Year	Month		How Paid	Amount
1930	January	9	By Check	$521.25
"	"	16	" "	488.15
"	"	23	" "	403.35
"	"	30	" "	319.95
"	February	6	" "	314.85
"	"	13	" "	343.65
"	"	20	" "	355.35
"	"	27	" "	351.30
"	March	6	" "	387.30
"	"	13	" "	363.45
"	"	20	" "	351.15
"	"	27	" "	352.80
"	April	3	" "	359.25
"	"	10	" "	399.15
"	"	17	" "	405.45
"	"	24	" "	557.80
"	May	1	" "	606.05
"	"	8	" "	423.60
"	"	15	" "	467.70
"	"	22	" "	483.45
"	"	29	" "	443.30
"	June	5	" "	537.30
"	"	12	" "	500.60
"	"	19	" "	84.50
"	"	19	" "	589.20
"	"	26	" "	506.75
"	July	3	" "	541.00
"	"	10	" "	570.10
"	"	17	" "	539.60
"	"	24	" "	557.65
"	"	31	" "	525.15
"	August	7	" "	558.25
"	"	14	" "	597.40
"	"	21	" "	610.55
"	"	28	" "	626.70
"	September	4	" "	568.75
"	"	11	" "	623.30
"	"	18	" "	599.70
"	"	25	" "	507.85
"	October	3	" "	666.75
"	"	9	" "	768.30
"	"	16	" "	855.10
"	"	23	" "	704.90
"	"	30	" "	668.30
"	November	6	" "	562.90
"	"	13	" "	549.75
"	"	20	" "	578.45
"	"	27	" "	469.65
"	December	4	" "	437.40
"	"	11	" "	634.60
"	"	18	" "	511.40
"	"	24	" "	696.80
1931	January	2	" "	726.60
"	"	8	" "	834.90
"	"	15	" "	869.80
"	"	22	" "	722.90
"	"	29	" "	711.60
"	February	5	" "	716.40
"	"	12	" "	724.40
"	"	19	" "	706.30
"	"	26	" "	728.00
"	March	5	" "	710.40
"	"	12	" "	663.90
"	"	19	" "	646.50

[fol. 1053]

Year	Month		How Paid	Amount
1931	March	26	By Check	$634.70
"	April	2	" "	620.20
"	"	9	" "	747.70
"	"	16	" "	780.50
"	"	23	" "	713.20
"	"	30	" "	651.20
"	May	7	" "	616.00
"	"	14	" "	628.90
"	"	21	" "	622.60
"	"	28	" "	606.10
"	June	4	" "	623.70
"	"	11	" "	621.00
"	"	18	" "	630.10
"	"	25	" "	588.70
"	July	2	" "	583.90
"	"	9	" "	580.50
"	"	16	" "	564.00
"	"	23	" "	569.20
"	"	30	" "	533.50
"	August	6	" "	575.00
"	"	13	" "	525.60
"	"	20	" "	581.50
"	"	27	" "	555.10
"	September	3	" "	566.50
"	"	10	" "	581.20

[fol. 1054] EXHIBIT 29

Names Listed Below cover Assignments of the Live Poultry Slaughter House Association for a period of one (1) year, commencing 9/8–1931 until 9/7/1932.

Name	Name
Bathgate Live Poultry Corp.	Horenstein & Bromberg, Inc.
B-G Poultry Market, Inc.	Hasenfratz, J.
Berkshire Live Poultry Co., Inc.	Harrison Live Poultry Co.
	Ideal Live Poultry M'kt
Blythebourne L. P. Market, Inc.	Johnson Ave. L. P. Co. (M. Ginsberg)
Belmont L. P. Co. (Abe Mintz)	Kings Poultry Co. (M. D. Litvack)
Flatbush Poultry Co. (M. Troob)	Mamber & Pepper
	Marotznik, Louis
Flushing Sanitary Poultry Co.	Morris Ave. L. P. Market
Gordon Brothers	Manne Brothers
Gross & Steinberg	121st St. Live Poultry M'kt Inc.
B. M. & N. Poultry Co., Inc.	
Gerger, Louis	Oster, Meyer
Hellman, Morris (A. Kleinman)	Passon & Co.
	Panesh Poultry Co.

Purdy St. Live Poultry M'kt
Pullman Poultry Co.
Perlman, A.
Public L. P. Market
Rosen, Max
Simon, Benjamin
Sokoloff, Siegel & Zarkin
Sanit, James
S. & K. Poultry Co., Inc.
Uneeda Live Poultry Market
Winkler & Diamont, Inc.
Webster Live Poultry Market
Winkel, A. L.
Dworkin, Harry
Haber Brothers
Lewis L. P. M'kt (Sam Finkelstein)
Mirotznik & Wernick
Nierenberg, Hyman
Cohen, J. Poultry Co., Inc.
Shore Road L. P. M'kt (L. Winkler)

Addresses omitted. See Stipulation.

[fol. 1055] EXHIBIT 30

Payments Made to Live Poultry Slaughter House Association by Bernstein & Sons, Inc.

Year	Month		How paid		Amount
1931	September	17	By	Check	$1061.70
"	"	24	"	"	1534.20
"	October	1	"	"	1780.00
"	"	8	"	"	1567.60
"	"	15	"	"	1420.40
"	"	22	"	"	1449.00
"	"	29	"	"	1357.20
"	November	5	"	"	1304.70
"	"	12	"	"	1218.10
"	"	19	"	"	1219.30

(Check of 11/19-1931, $1,219.30, ready to be mailed.)

[fol. 1056] EXHIBIT 32

Members of the Greater New York Live Poultry Chamber of Commerce

Members of the Year of November 16, 1927, Until November 15, 1928

Bronx

Wikler & Deimant, Inc.
A. Bloom, Inc.
Monroe Poultry Co., Inc.
K. Gross, Inc.
F. G. T. L. P. Co., Inc.
M. Siegel
H. & S. Poultry Co., Inc.
Horenstein & Spatz, Inc.
Tremont L. P. Co., Inc.
Webster L. P. Corp.
M. Rosen L. P. Co., Inc.
Sokoloff & Siegel, Inc.
Bronx Poultry Co., Inc. (David Grossman)
I. Frank
Van Nest L. P. M'kt, Inc.
B. Panesh
M. Friedlander
Barney Azwolinsky
Manne Bros.

Harlem

Morris Romaner, Inc.
Schiller & Levy
121st St. L. P. M'kt, Inc.
Albert L. Winkel, Inc.
Yorkgate L. P. M'kt (Max Kaplan)
Plotkin & Zarkin
Yorkville L. P. M'kt, Inc. Max Cohen
Perrick Bros.
Schaier & Glazer
Wm. Simon, Inc.
137th St. L. P. M'kt

[fol. 1057]

East Side

Chas. Finkelstein, Inc.
Plotkin & Zimmering
Louis Weidberg & Son
I. Wernick
Mirotznik & Rosenberg, Inc.
Haber Bros.
Edward Semmel
Frankfater Bros.
Wolfe Poultry Co.
Howard L. P. M'kt, Inc.
Grand St. L. P. M'kt, Inc. (Chast & Binder)
H. Kosansky
D. & W. Katz
Pitt St. L. P. M'kt, Inc.

East New York & Brownsville

B. Taits, Inc.
Weinstein L. P. M'kt, Inc.
Dvorkin & Blumenfeld, Inc.
Garber & Oster
Morris L. Hellman
Gordon L. P. Co., Inc.
David Hirshon
Howard L. P. Co., Inc.
Abram Kleinman
Koslow & Miller
Louis Marotznick
Mintz & Krasilnick
Prospect L. P. M'kt, Inc.
Harry Rubin
David Hasenfratz & Son
I. Resnick
Samuel Kadin, Inc.
Frisman & Azwolinsky
Sorkin Bros.
Gordon & Lippman

[fol. 1058]

Williamsburg

Louis Gold
H. Lokietz & Sons, Inc.
Dinetman L. P. Co., Inc. (Emerson)
Gordon Bros.
Irving L. P. M'kt, Inc.
Mamber & Pepper
M. Sahn & Son, Inc.
Philip Skloot
Steuer Poultry Co.
Max Gold
Berkowitz & Finkel
Podbrosky Bros.
Leo Gold
Harry Fertig

Borough Park, Coney Island, Etc.

Joe Usim
Bath Beach L. P. Market, Inc. (Louis Schenckman)
Church Ave. L. P. Market, Inc. (Abe Brockstein)
Bensonhurst L. P. Market (H. Seldin)
Park L. P. Co., Inc. (Kantrowitz & Chernick)
Harrison L. P. Co., Inc.

[fol. 1059]

Joe Scull, Inc.
Isaac E. Burg
Morris Gerber, Inc.
Sunset L. P. Co., Inc.
Midwood L. P. M'kt, Inc.
Howard Poultry Co., Inc.
Max Glantz
Passon & Co.
Berkshire L. P. Co., Inc. (S. Barkan)
Beachview L. P. M'kt. (Sam English)
Ft. Hamilton L. P. M'kt (Sam Schuckman)
West End L. P. M'kt (Donne & Lichter)
Meyer Taxel
Kings L. P. M'kt, Inc.
Uneeda L. P. M'kt, Inc.
Blythebourne L. P. M'kt, Inc.

Addresses omitted. See stipulation.

[fol. 1060]

EXHIBIT 33

Names listed below cover assignments of the Live Poultry Dealers Protective Ass'n of N. Y. & Vicinity for a period of one (1) year commencing November 16th, 1928, until November 15th, 1929, Inc.

Name	Name
Astoria Live Poultry Co.	Baskin, Max
Arotzky Brothers	Baron, Chas.
Antzis & Company	Binder, M.
Ashburton Ave. Poultry M'kt (S. Conova)	Cea, Rocco
Borofeld Live Poultry M'kt	Chimbel, Philip
Bass Philip	Cohen, B.
Brown Harry	Caroni & Parteni
Broadway Live Poultry M'kt, Inc.	Cea, Steffin
Bernstein, Nathan	Cheplowitz, Peter
Brown & Bergenfeld	Clementi, M.
Brookside Live Poultry M'kt	D'Amore, A.
Blick, S.	Dolobovsky, Julius
	Davidson, I.
	DeNigris, Rocco

Name

Edlstein, Sam
Franklin, Herman
Freund, Louis M.
Feldman, Sam
Fifty-Fifth St. Poultry Co.
Feldman, Louis & Son
Fein, Morris
Franklin, Benjamin
Falco, Chas.
Forsmith, Benj.
Fressello, G.
Feldman, Rafel
Fasano, Dominick
Fleischer, R.
Feldman, Sam
Feldman, Sam
Glenwood Rd. Poultry M'kt (A. Klein)
Goldstein & Co.
Glassman, Sol
Gelof Harry (112th St. L. P. Market)
Goldberg, S. (Garden L. P. Market)
Ginsburg, D.
Gillman, B.
Gallello Bros.
Hillman, Sam
Harnett, Jacob
Hempstead Live Poultry M'kt
Hishkowitz & Goldberg

[fol. 1061]

Jaffee & Cohen
Jackson Live Poultry M'kt
Jaffee, Max
Jeadlicka's L. P. Market
Joselson & Safran
Junius Live Poultry M'kt
Kaplan & Gold
Kowalsky, Jacob
Kowalsky Brothers
Kaplan B. (Evergreen LP. Market)

Name

Kowalsky, Ch.
Kassak, A.
Laub, Jos. A.
Lerman, Louis
Laqua, Tony (Philip)
Livoti, C., L. P. Market
Leffel, Philip
Milazzo, Nicolo
Mazzeo Bros.
Mazzeo & Lazealo
Market St. Poultry Corp.
Mione & Pellegrino
Miano & Son
Milavsky, L.
Mines, Joe
Milavsky, Philip
Markowitz & Michael
Morgenbesser, Nathan
Goldowitz Bros.
Pack, Ben
Perlman, Alexander
Piccolo, S.
Pack, David
Penzavechia, S.
Posteraro, Jack
Powell & Lefkowitz
Pietro, S.
Papish, A.
Queens County L. P. Market
Fanelli, Leonard
Rosenstein, Harry
Robish & Berkowitz
Reed, Wm. J.
Ranish, Wm.
Russo, Chas.
Rivlin & Edelman
Rubinstein & Gelbutch
Renna, E.
Rosen & Wilkin
Ritter, Louis
Rimer & Grassgreen
Rifkin & Woloshin
Reznick, Max
Roth, Joseph

Name	Name
Rodney Live Poultry Market, Inc.	V. & L. Live Poultry Market
Shapiro, Cecil	Wiener & Zorn
Schiller & Joselson	Wisotsky, Irving
So. Brooklyn Poultry Corp.	Woodside Live Poultry M'kt
Sobelson & Deutch	Wolfe, Isaac
Safron, Herman	Weiss, Irving
Siegel, Wm.	Westchester Live Poultry Market
Tannenbaum, A. H.	Wallach & Kranz
Tartazky, Geo.	Whiters St. L. P. Market (Gelb & Einhorn)
Tartazky & Finkelstein	York Live P. Market (J. Kowalsky)
[fol. 1062]	
Union St. Poultry Market	

Addresses Omitted. See Stipulation.

(Here follow Exhibits 40 to 45, side folios 1063, 1064, 1065, 1066, 1067, and 1068)

EXHIBIT NO. 6

806

106

No. 14 Brooklyn, N.Y. 9-10 1927 D

THE PUBLIC NATIONAL BANK 1-238

OF NEW YORK.

PITKIN AVENUE BRANCH

PITKIN AVENUE AND WATKINS STR.

Pay to the order of Cash $ 40.00

Forty 00 Dollars

11724

Dara Harnett

Ex. 40

652-30

CITIZENS BANK OF BROOKLYN
PROSPECT POULTRY CO.

SEP 12 1927
CITIZENS BANK OF BROOKLYN
1-835

Ex. 7 11/22/27
Joseph B. Rodolphy
Refene

EXHIBIT NO. 5

8068
1064

No. 3 Brooklyn, N.Y. 9-3 1927 D

THE PUBLIC NATIONAL BANK 1-238

OF NEW YORK
PITKIN AVENUE BRANCH
PITKIN AVENUE AND WATKINS ST.

Pay to the order of Cash $45.00

Forty five 00 Dollars

1172

Dora Harnett

Ex. 41-

652-30

PAY TO THE ORDER OF
CITIZENS BANK OF BROOKLYN
PROSPECT POULTRY CO.

RECEIVED PAYMENT
THROUGH
CHECK DEPOSIT
FEDERAL RESERVE
PRIOR ENDORSEMENTS
CITIZENS BANK OF BROOKLYN
4-835
SEP - 7 1927
THE CHEMICAL NATIONAL BANK
OF NEW YORK

PAY TO THE ORDER OF
Any Bank, Banker or Trust Co.
PRIOR ENDORSEMENTS
CITIZENS BANK OF BROOKLYN
1927

Ex. 5 of 11/22/27
Joseph Rosenberg
Referee

Jan 4/16

EXHIBIT NO. 4

8060
1065

THIS CHECK IS ISSUED IN PAYMENT OF ITEMS AS PER STATEMENT FOLLOWING. ENDORSEMENT OF PAYEE WILL CONSTITUTE A RECEIPT IN FULL

DATE		AMOUNT	
TOTAL			
DISCOUNT			
NET			

S. & D. HARNETT
Wholesale & Retail LIVE POULTRY
329 HEGEMAN AVENUE

11724

No. 957 D

PAY TO THE ORDER OF Cash

BROOKLYN, N.Y. 8-22 1927

$ 42.00

Forty two DOLLARS

TO THE PUBLIC NATIONAL BANK
OF NEW YORK.
PITKIN AVENUE BRANCH
1-238 PITKIN AVENUE AND WATKINS STR
BROOKLYN, N.Y.

Dora Harnett

Ex. 42

Daniel Weiss

THE STATE OF NEW YORK
AUG 23 27
FEDERAL RESERVE BANK
THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK

Portfolio

EXHIBIT NO. 3

8060

1066

THIS CHECK IS ISSUED IN PAYMENT OF ITEMS AS PER STATEMENT FOLLOWING ENDORSEMENT OF PAYEE WILL CONSTITUTE A RECEIPT IN FULL	
DATE	AMOUNT
TOTAL	
DISCOUNT	
NET	

S. & D. HARNETT
Wholesale & Retail LIVE POULTRY
429 HEGEMAN AVENUE

No. 943 D

11724

PAY TO THE ORDER OF Cash

BROOKLYN, N.Y. Aug 15 1927

$43 59/100

Forty-three 59/100 DOLLARS

TO THE PUBLIC NATIONAL BANK OF NEW YORK.
PITKIN AVENUE BRANCH
1-238 PITKIN AVENUE AND WATKINS STR.
BROOKLYN, N.Y.

Sara Harnett

Ex. 43

PAY TO THE ORDER OF
Any Bank, Banker or Trust Co.
PRIOR ENDORSEMENTS GUARANTEED
AUG 15 1927
CITIZENS BANK OF BROOKLYN
1-035 CLERK IN PORTER.

RECEIVED PAYMENT THROUGH THE CHECK DEPARTMENT OF THE FEDERAL RESERVE BANK [redacted] PRIOR ENDORSEMENTS GUARANTEED
AUG 16 1927
THE CHEMICAL NATIONAL BANK OF NEW YORK

Ex. Pres Marsyn to Ex 3 of 11/22/27 Joseph Rowery Refuse

Ex 3/19

EXHIBIT NO. 1

806

NO. CA.

Public Hall Bank Fifteen Ave Branch

Brooklyn, N.Y. 8 1 1927

PAY TO THE ORDER OF Cash $ 44.00

Forty four 00/100 DOLLARS

1941

S. Hannett

Govt Exp 20

Ex. 1 recd 11/22/27
Joseph S. Rosen
Reporter
J. Stalan
Charles Ford

AUG 1927

Trust Co.
108
T.

FOR ENDORSEMENTS GOLDEN FIELD
First National Bank of Hoboken, N. J.

EXHIBIT NO. 2

8061
1068

NO.

Public Natl Bank Sutter Ave Office

Brooklyn NY 8-9 1927

PAY TO THE ORDER OF Samuel Lipkin $35.00

Thirty five 00/100 DOLLARS

1541.

S Harnett

Ex. 45

Ex 2 recd. 11/22/27 Joseph S Rosenberg Refer.

Samuel Lipkin
I. Lefkowitz
129

RECEIVED PAYMENT
SECOND TELLER
Y AUG 13 1927 Y
THE PUBLIC NATIONAL BANK & TRUST CO.
OF NEW YORK

[fol. 1069] EXHIBIT 47

Judgment Roll

Supreme Court, Kings County

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,

against

COMMUNITY LIVE POULTRY CORPORATION, Defendant

Judgment.

This action having been duly instituted by the People of the State of New York upon leave being obtained in this Court for a judgment annulling the corporate existence of the defendant under Section 130 of the General Corporation Law of the State of New York upon the ground that the said corporation has violated the Laws of the State of New York whereby it has violated its charter and become liable to be dissolved by the abuse of its corporate powers, the action being one triable of course and of right by a jury as prescribed by Section 133 of the General Corporation Law of the State of New York and this Court having directed that all the questions on the issues in this case be tried by a jury and a trial term of this Court and this Court having duly framed questions for submission to the jury and the action having been duly tried by the Court and a jury at a Trial Term of this Court held in and for the County of Kings on the 19th, 20th and 21st days of April, 1926, and the said questions having been thereupon duly tried and the verdict of the jury having been duly found and recorded as follows:

First: Was the defendant corporation organized for the purpose of effecting a combination of live poultry dealers so as to control the sale at retail and the price to be obtained therefor of live poultry in the sections known as [fol. 1070] Williamsburgh and Greenpoint in the County of Kings?

To this question the Jury answered Yes.

Second. Did the defendant corporation to a substantial degree obtain control of the business of retailing live poul-

try in the Williamsburgh and Greenpoint sections of the County of Kings under agreements leasing to it the places of business of former independent retailers and the installation of the former proprietors of business places as managers thereof at a weekly salary and fixing the prices at which live poultry should be sold at retail by those subject to the defendant's control through a price-fixing committee?

To this question the Jury answered Yes.

Third. Did the operations of the defendant corporation result in placing it in a position to control to a substantial degree the business of selling live poultry in the Williamsburgh and Greenpoint sections of the County of Kings?

To this question the Jury answered Yes.

Fourth. Did the acts of the defendant in the conduct of its business restrain or prevent competition in the Williamsburgh and Greenpoint sections of the County of Kings in the supply or price of live poultry to consumers?

To this question the Jury answered Yes.

The Court having adopted such findings of the jury and the Court having duly made its decision in writing stating the facts found and conclusions of law thereon and directing judgment to be entered as hereinafter stated, due notice of application of this judgment having been given to the defendant's attorney is directed by this Court, the plaintiff's costs having been duly taxed at Ninety Six & 10/100 Dollars ($96.10/100), it is, on motion of Albert Ottinger, Attorney-General of the State of New York, attorney for plaintiff,

[fol. 1071] Ordered, adjudged, and decreed that the charter or certificate of incorporation of the defendant Community Live Poultry Corporation be and the same hereby is vacated and the existence of the defendant Community Live Poultry Corporation be and the same hereby is annulled on the ground that the defendant Community Live Poultry Corporation has offended against the provisions of the General Corporation Law of the State of New York under which it was organized and has violated the provisions of Section 340 of the General Business Law of the State of New York and has abused its corporate powers; and it is

Further ordered, adjudged, and decreed that the defend-

ant Community Live Poultry Corporation, its directors, officers, managers and employees be and they hereby are jointly and severally enjoined and restrained from transacting any corporate business or in any manner transferring, disposing or interfering with any of the property of the defendant Community Live Poultry Corporation except to turn over the same to the receiver hereinafter designated in this judgment; and it is

Further ordered, adjudged, and decreed that Abram Sebring, 60 Wall St., be and he hereby is appointed as permanent receiver of the defendant Community Live Poultry Corporation with the usual powers and duties enjoyed and exercised by receivers according to the practice of this court and all the statutes in such case made and provided and he is hereby authorized to take possession of and sequestrate the property, things in action and effects, real and personal, of the defendant Community Live Poultry Corporation and to take possession of and sell all such property and distribute the same among the creditors, stockholders and other persons entitled thereto under the direction of this Court; and it is

[fol. 1072] Further ordered, adjudged, and decreed that said receiver before entering upon the duties of this trust execute to the People of the State of New York and file with the Clerk of this Court a bond in the penalty of Five Thousand ($5,000.00) Dollars with at least two sufficient sureties or a surety company, name to be approved by a Justice of this Court conditioned to the faithful discharge of his duties as a receiver and for the final accounting of all moneys and property received by him; and it is

Further ordered, adjudged, and decreed that the said receiver deposit all moneys received by him not required for immediate disbursement in the Lawyers Trust Co. in the Borough of Brooklyn, City of New York and County of Kings; and it is

Further ordered, adjudged, and decreed that the receiver pay to the plaintiff The People of the State of New York through the Attorney-General of the State of New York the sum of Ninety Six 10/100 ($96.10) Dollars the costs and disbursements of the plaintiff as taxed by the Clerk of this Court; and it is

Further ordered, adjudged, and decreed that either party to this action may apply to this Court at the foot of this

judgment for such further order or direction as may be necessary or may hereafter appear to this Court to be proper and just.

Enter.

Stephen Callaghan, Justice of the Supreme Court of the State of New York. William E. Kelly, Clerk.

Granted April 30, 1926.

William E. Kelly, Clerk.

[fol. 1073] Supreme Court, Kings County

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,

against

COMMUNITY LIVE POULTRY CORPORATION, Defendant

Findings of Fact and Conclusions of Law

This action having been duly instituted by the People of the State of New York upon leave being obtained in this Court for a judgment annulling the corporate existence of the defendant under Section 130 of the General Corporation Law of the State of New York upon the ground that the said corporation has violated the Laws of the State of New York whereby it has violated its charter and become liable to be dissolved by the abuse of its corporate powers, the action being one triable of course and of right by a jury as prescribed by Section 133 of the General Corporation Law of the State of New York and this Court having directed that all the questions on the issues in this case be tried by a jury and a trial term of this Court and this Court having duly framed questions for submission to the jury and the action having been duly tried by the Court and a jury at a Trial Term of this Court held in and for the County of Kings on the 19th, 20th and 21st days of April, 1926, and the said questions having been thereupon duly tried and the verdict of the jury having been duly found and recorded as follows:

First. Was the defendant corporation organized for the purpose of effecting a combination of live poultry dealers so as to control the sale at retail and the price to be obtained therefor of live poultry in the sections known as Williamsburgh and Greenpoint in the County of Kings?

To this question the Jury answered Yes.

[fol. 1074] Second. Did the defendant corporation to a substantial degree obtain control of the business of retailing live poultry in the Williamsburgh and Greenpoint sections of the County of Kings under agreements leasing to it the places of business of former independent retailers and the installation of the former proprietors of business places as managers thereof at a weekly salary and fixing the prices at which live poultry should be sold at retail by those subject to the defendant's control through a price-fixing committee?

To this question the Jury answered Yes.

Third. Did the operations of the defendant corporation result in placing it in a position to control to a substantial degree the business of selling live poultry in the Williamsburgh and Greenpoint sections of the County of Kings?

To this question the Jury answered Yes.

Fourth. Did the acts of the defendant in the conduct of its business restrain or prevent competition in the Williamsburgh and Greenpoint sections of the County of Kings in the supply price of live poultry to consumers?

To this question the Jury answered Yes.

The Court having adopted such findings of the jury now upon the pleadings and the evidence of the parties in said verdict and upon reading and filing the notice of application for final judgment on the whole issues herein, dated the 22nd day of April, 1926, and after hearing Israel M. Lerner, Esq., Deputy Attorney-General, of counsel for the plaintiff, and Isidor Neuwirth, Esq., of counsel for the defendant, in opposition, and due deliberation thereon having been had, I decide as follows:

First. That Albert Ottinger is the Attorney-General of the State of New York, duly qualified and acting as such [fol. 1075] and that, pursuant to an order of the Supreme Court of the State of New York, County of Kings, dated the 24th day of February, 1926, and duly entered in the office of the Clerk of the County of Kings on said date, he has been duly authorized to commence this action in the name of the People of the State of New York against the Community Live Poultry Corporation to procure a judgment vacating the charter and annulling the existence of the said corporation upon the ground that it has violated

the laws of the State of New York whereby it has forfeited its charter and has become liable to be dissolved by the abuse of its corporate powers.

Second. That at all times hereinafter mentioned defendant, Community Live Poultry Corporation, was and still is a corporation organized and existing under and by virtue of the laws of the State of New York.

Third. That the defendant, Community Live Poultry Corporation, was organized for the purpose of effecting a combination of live poultry dealers so as to control the sale at retail and the prices to be obtained therefor of live poultry in the sections known as Williamsburgh and Greenpoint in the County of Kings.

Fourth. That the defendant corporation to a substantial degree obtained control of the business of retailing live poultry in the Williamsburgh and Greenpoint sections of the County of Kings under agreements leasing to it the places of business of former independent retailers and the installation of the former proprietors of business places as managers thereof at a weekly salary and fixing the prices at which live poultry should be sold at retail by those subject to the defendant's control through a price-fixing committee.

Fifth. That the operations of the defendant corporation resulted in placing it in a position to control to a substantial degree the business of selling live poultry in the Wil- [fol. 1076] liamsburgh and Greenpoint sections of the County of Kings.

Sixth. That the acts of the defendant in the conduct of its business did restrain and prevent competition in the Williamsburgh and Greenpoint sections of the County of Kings in the supply or price of live poultry to consumers.

Seventh. That the defendant Community Live Poultry Corporation was and is an unlawful combination in restraint of trade and has been and is conducting its corporate franchise in violation of the laws of the State of New York and particularly Sections 340 to 346 of the General Business Law of the State of New York and has abused the corporate powers conferred upon it by the State of New York.

Conclusions of Law

First. That the defendant has established a monopoly in the sale of live poultry to consumers in the Williamsburgh and Greenpoint sections of the County of Kings and has restrained and prevented for the purpose of creating, establishing and maintaining said monopoly the free pursuit in said district of the sale at retail of live poultry in violation of Section 340 of the General Business Law of the State of New York.

Second. That the defendant Community Live Poultry Corporation has offended against the provisions of the General Corporation Law of the State of New York under which it was created and has been guilty of a violation of Section 340 of the General Business Law of the State of New York, has abused its corporate powers and the charter of the defendant Community Live Poultry Corporation should be vacated and its corporate existence annulled.

Third. That a receiver of the property and effects of the defendant Community Live Poultry Corporation should be appointed pursuant to law with all the powers and [fol. 1077] authority conferred by law and subject to all the duties and liabilities imposed upon such receivers in such cases.

Fourth. That the defendant Community Live Poultry Corporation should, through its directors, officers, managers and employees, be restrained by injunction from transacting any corporate business or in any manner transferring, disposing or interfering with any of its property or assets except to transfer the same to the receiver appointed by this Court.

Fifth. That the plaintiff herein recover the costs and disbursements of this action.

Sixth. Let judgment be entered accordingly.

Dated April 30, 1926.

Stephen Callaghan, Justice of the Supreme Court of the State of New York.

[fol. 1078] At a Special Term of the Supreme Court held in and for the County of Kings, at the County Court House,

in the Borough of Brooklyn, City of New York, County of Kings, State of New York, on the 24th day of February, 1926.

Present: Hon. Mitchell May, Justice.

In the Matter of the Application of ALBERT OTTINGER, Attorney-General of the State of New York, for Leave to Commence an Action in This Court to Vacate the Certificate of Incorporation and Annul the Corporate Existence of the COMMUNITY LIVE POULTRY CORPORATION, a Corporation Organized and Created under and by Virtue of the Laws of the State of New York

Petition and Order for Leave to Commence Action

Upon reading and filing the annexed petition of Albert Ottinger, Attorney-General of the State of New York, verified the 23rd day of February, 1926, wherefrom it satisfactorily appears to this Court that there exists reasonable grounds justifying the Attorney-General of the State of New York to commence an action in the name of the People of the State of New York against the Community Live Poultry Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of New York, to annul the corporate existence of said corporation, under the provisions of Article 7 of the General Corporation Law of the State of New York, upon the grounds that said corporation has violated the laws of the State of New York, and particularly, Sections 340 to 346 of the General Business Law of the State of New York, and has abused its corporate powers, conferred upon it, by the State of New York, in creating and maintaining an [fol. 1079] unlawful monopoly in the purchase and sale of live poultry in the Borough of Brooklyn, City of New York and particularly that portion thereof, known as Williamsburg and Greenpoint, and that said corporation has conducted its corporate franchise to create such unlawful monopoly, and to constitute itself as a Price Fixing Corporation in the purchase and sale of live poultry in said territories; and that by reason of said unlawful acts, and abuse of its corporate powers, it has become liable to be dissolved, in accordance with the provisions of the General Corporation Law of the State of New York heretofore set forth.

Now, on motion of Albert Ottinger, Esq., Attorney-General of the State of New York, it is

Ordered that pursuant to Sections 130 and 131 of the General Corporation Law of the State of New York, leave be and hereby is granted to the Attorney-General of the State of New York to commence an action in the name of the People of the State of New York against the Community Live Poultry Corporation, to procure a judgment vacating the charter and annul-ing the existence of the said corporation, upon the ground that it has violated the laws of the State of New York, whereby it has forfeited its charter and has become liable to be dissolved by the abuse of its corporate powers.

Enter.

Mitchell May, Justice of the Supreme Court of the State of New York.

Granted Feb. 24, 1926.

William E. Kelly, Clerk.

[fol. 1080] SUPREME COURT, KINGS COUNTY

In the Matter of the Application of ALBERT OTTINGER, Attorney-General of the State of New York, for Leave to Commence an Action in This Court to Vacate the Certificate of Incorporation and Annul the Corporate Existence of the COMMUNITY LIVE POULTRY CORPORATION, a Corporation Organized and Created under and by Virtue of the Laws of the State of New York

To the Honorable Justices of the Supreme Court of the State of New York, County of Kings:

The petition of Albert Ottinger, Attorney-General of the State of New York, respectfully alleges:

First. That your petitioner is the Attorney-General of the State of New York, duly qualified and acting as such.

Second. That the Community Live Poultry Corporation is a corporation organized and existing under and by virtue of the laws of the State of New York, having duly filed its certificate of incorporation in the office of the Secretary of State of the State of New York on the 12th day of January, 1925, and in the office of the Clerk of the County of

Kings on the 14th day of January, 1925, and that a copy of the Certificate of Incorporation of the said Community Live Poultry Corporation is hereto annexed and marked "Exhibit A", and the contents thereof are herewith reiterated with the same force and effect, as if again set forth at length.

Third. That on or about the 26th day of January, 1926, complaint was made to your petitioner, that the Community [fol. 1081] Live Poultry Corporation was not oragnized or conducting its business in accordance with the provisions of its certificate of incorporation, by conducting a legitimate buying and selling enterprise, but was organized for the purpose of compelling live poultry dealers to become stockholders in said corporation, to compel such dealers to turn over their business to such corporation and become employees thereof under threat and intimidation that they would be forced out of business in the event of their refusal to do so, and that said corporation was organized and its business conducted to obtain a monopoly of the live poultry industry in the Borough of Brooklyn, City of New York and particularly in the territories known as Williamsburg and Greenpoint, so that live poultry could be purchased from the source of supply only through said corporation, and the said corporation dictated the final retail price at which said poultry should be ultimately sold to the consumer, all in violation of Article 25, Sections 340 to 346 inclusive of the General Business Law of the State of New York.

Fourth. That as a result of said complaints, the petitioner presented a petition to this court, for an order, appointing a Referee to take testimony of the facts of such complaint, and that on said petition an order was duly made by this court on the 26th day of January, 1926, appointing Harold L. Turk, Esq., as Referee to take such testimony, and that a true copy of said order of reference is hereto annexed and marked "Exhibit B", and the contents thereof are hereby reiterated with the same force and effect as though they had been set forth at length.

Fifth. The hearings were duly had before said Referee, and the testimony before the said Referee established, to

the satisfaction of your petitioner, the following state of [fol. 1082] facts:

That persons having established live poultry businesses were induced to become stockholders of said corporation, upon representations made to them by the officers of the corporation, that the sole object of the corporation was for the purpose of obtaining a one hundred percent membership of the live poultry dealers in the territory in which the corporation operated, to wit, that part of the Borough of Brooklyn, City of New York, known as Williamsburg and Greenpoint, for the purpose of enabling the corporation to wipe out all competition that then existed between the live poultry dealers in that territory, to enable the corporation to become the sole purchasing agent from the source of supply, and the sole distributors in said territory for live poultry, and to enable the said corporation to fix the price, through a Price Fixing Committee, at which live poultry should be sold to the ultimate consumer in that territory, that the officers of said corporation threatened prospective members that if they did not join said corporation as stockholders and turn over their individual business to it, and become employees of said corporation, that their only source of supply, to wit, West Washington Market, Borough of Manhattan, City of New York, would be cut off and other means would be taken by the said corporation for the purpose of causing them to suspend business.

Sixth. That the said corporation, through its Board of Directors and others constituted with them, did compel approximately one hundred percent of the retail live poultry dealers under such threats and intimidations to become stockholders in said corporation, and to turn over their businesses to said corporation, and submit to the absolute control and dictation of the corporation, its officers and directors in the conduct of said poultry business.

[fol. 1083] Seventh. That the persons so turning over their business to said corporation were thereupon employed by the corporation as managers of the businesses theretofore conducted by them, at a weekly salary, and were compelled to account to said corporation for all the sales made by them, at a price not less than the price fixed by the Board of Directors and the Price Fixing Committee of the said corporation. That if poultry was sold by any of the

said stockholders, at less than the price fixed by said corporation to the consumer, that the corporation fixed upon such stockholders the penalty of withdrawing the management of said business, taking possession of the said business, ousting the stockholder therefrom, and deducting the difference in price from the weekly salary due to the said stockholder as manager.

Eighth. From the investigation made by your petitioner, and the facts developed upon said investigation, your petitioner states that the said Community Live Poultry Corporation was not organized for the purpose of conducting a legitimate buying and selling business, on its own account but was organized for the sole object and purpose of effecting a monopoly in the live poultry business by a combination of live poultry dealers, so that the price of purchase and the price of sale of live poultry could be solely regulated and controlled by the said Community Live Poultry Corporation, and that the sole purpose of corporate activity of said corporation was to regulate and control such prices and to effect a monopoly in the live poultry industry, in violation of Sections 340 to 346 of the General Business Law of the State of New York, and in itself constitutes an unlawful combination as construed by the Court of Appeals in People vs. Milk Exchange, 145 N. Y. 267.

Ninth. That the said Community Live Poultry Corpo- [fol. 1084] ration have never obtained from the City of New York or any of its departments a license to conduct the live poultry business as required by the ordinances of said City, but has been operating solely on the licenses of its individual stockholders, conclusively establishing thereby that the sole object and purpose of the corporation was to create and maintain an illegal monopoly, and to act as a Price Fixing Corporation only.

Tenth. That the said Community Live Poultry Corporation has and is conducting its corporate franchise in violation of the laws of the State of New York, and particularly in violation of Sections 340 to 346 of the General Business Law of the State of New York. That it has abused its corporate powers, conferred upon it by the State of New York, and has thereby forfeited its corporate charter, and become liable to be dissolved, and that under the facts as stated in this petition, your deponent respectfully prays for

leave to commence an action against said corporation as provided by Article 7 of the General Corporation Law of the State of New York.

Eleventh. That no previous application for the order prayed for herein has been made to this or any other court or judge.

Wherefore your petitioner respectfully prays for an order, granting leave to the Attorney-General of the State of New York to commence an action in the name of the People of the State of New York to procure a judgment, vacating and annulling the certificate of incorporation of the Community Live Poultry Corporation together with such other and further relief, as in the premises may be proper and just.

[fol. 1085] Dated New York, February 23, 1926.

Albert Ottinger, Attorney-General of the State of New York. Office & Post Office address: Capitol, Albany, New York; New York City Bureau, 49 Chambers Street, New York City.

[fol. 1086] STATE OF NEW YORK,
City of New York,
County of New York, ss:

Israel M. Lerner, being duly sworn, deposes and says:

That he is a Deputy Attorney-General of the State of New York. That he has read, and knows the contents of the foregoing petition. That the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. That your deponent on behalf of the Attorney-General of the State of New York, conducted the investigation before Harold L. Turk, Esq., Referee, heretofore appointed by this court to investigate the facts and circumstances in connection with the business operations of the Community Live Poultry Corporation, and that he is personally familiar with the facts and circumstances testified to in connection with the said Reference, which said facts and circumstances have been incorporated in the foregoing petition.

——.

Sworn to before me this 23rd day of February, 1926. ——.

[fol. 1087] SUPREME COURT, KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,

against

COMMUNITY LIVE POULTRY CORPORATION, Defendant

Pleadings

The plaintiff complaining of the defendant by Albert Ottinger, Attorney-General of the State of New York, respectfully alleges and sets forth:

First. That Albert Ottinger is the Attorney-General of the State of New York, duly qualified and acting as such and that, pursuant to an order of the Supreme Court of the State of New York, County of Kings, dated the 24th day of February, 1926, and duly entered in the office of the Clerk of the County of Kings on said date, he has been duly authorized to commence this action in the name of the People of the State of New York against the Community Live Poultry Corporation to procure a judgment vacating the charter and annulling the existence of the said corporation upon the ground that it has violated the laws of the State of New York whereby it has forfeited its charter and has become liable to be dissolved by the abuse of its corporate powers.

Second. That at all times hereinafter mentioned defendant, Community Live Poultry Corporation, was and still is a corporation organized and existing under and by virtue of the laws of the State of New York.

Third. On information and belief that the said defendant, Community Live Poultry Corporation, was not organized nor did it subsequent to its organization conduct its business in accordance with its certificate of incorporation [fol. 1088] by conducting a legitimate buying and selling enterprise but was organized for the purpose of and did conduct its business for the purpose of compelling live poultry dealers to become stockholders in said corporation, to compel such dealers to turn over their business to such corporation and become employees thereof under threat and intimidation that they would be forced out of business in the event of their refusal so to do and that said corpo-

ration was organized and its business conducted for the purpose and intent of obtaining a monopoly of the live poultry industry in the Borough of Brooklyn, City of New York, and particularly in the territories known as Williamsburgh and Greenpoint so that live poultry could be purchased from the source of supply only through said corporation and that said corporation dictated the final retail price at which said poultry should be ultimately sold to the consumer, all in violation of Article 25, Section 340 to 346 inclusive of the General Business Law of the State of New York.

Fourth. On information and belief that in carrying out the real purposes and objects of the said corporation persons having established live poultry businesses were induced to become stockholders of the said corporation upon representations made to them by the officers of the defendant corporation that the sole object of the corporation was for the purpose of obtaining one hundred per cent membership of the live poultry dealers in the territory in which the corporation operated, to wit, that part of the Borough of Brooklyn, City of New York, known as Williamsburgh and Greenpoint, for the purpose of enabling the defendant corporation to wipe out all competition that then existed between the live poultry dealers in that territory, to enable the corporation to become the sole purchasing agent from the source of supply and the sole distributor in said territory of live poultry and to enable the said corporation to [fol. 1089] fix the price through a price-fixing committee at which live poultry should be sold to the ultimate consumer in that territory; that the officers of said corporation threatened prospective members that if they did not join said corporation as stockholders and turn over its individual business to it and become employees of said corporation that their only source of supply, to wit, West Washington Market, Borough of Manhattan, City of New York, would be cut off and other means would be taken by said corporation for the purpose of causing them to suspend business; that said corporation by and through its officers and directors, did, by means of threat and intimidation, cause the live poultry dealers in said territory to become stockholders in said corporation and otherwise to bring their individual business within the jurisdiction and control thereof; that the said defendant corporation, through

its board of directors and officers, did induce approximately one hundred per cent of the retail live poultry dealers under such threats and intimidation to become stockholders in the said corporation and to turn over their business to said corporation and submit to the absolute control and dictation of the defendant corporation and its officers and directors in the conduct of the said poultry business.

Fifth. On information and belief that the persons so turning over their businesses to the said corporation were thereupon employed by said corporation as managers of the businesses theretofore conducted by them at a weekly salary and were compelled to account to said corporation all sales made by them at a price not less than the price fixed by the board of directors and the price-fixing committee of the said corporation; that if the poultry was sold by any of the stockholders at less than the price fixed by the said corporation to the consumer that the defendant [fol. 1090] corporation visited upon said stockholders the penalty of withdrawing the management of said business, taking possession of the said business, ousting the stockholder therefrom and taking the difference in price from the weekly salary due to the said stockholder as manager.

Sixth. On information and belief that the said defendant, Community Live Poultry Corporation, is not organized for the purpose of conducting a legitimate buying and selling business on its own account but it was organized for the sole object and purpose and actually did so conduct its business under its said certificate of incorporation as to effect a monopoly in the live poultry business by a combination of live poultry dealers so that the price of purchase and the price of sale of live poultry could be and was solely regulated and controlled by the said defendant, Community Live Poultry Corporation; that the sole purpose of corporate activity of said corporation was to regulate and control such prices and to effect a monopoly in the live poultry industry, all in violation of Sections 340 to 346 inclusive of the General Business Law of the State of New York.

Seventh. That the defendant corporation was and is an unlawful combination in restraint of trade and has and is conducting its corporate franchise in violation of the laws of the State of New York, particularly of Sections 340 to 346 of the General Business Law of the State of New York

and has abused the corporate powers conferred upon it by the State of New York and has thereby forfeited its corporate charter and become liable to be dissolved. That by reason of the acts of the defendant, as hereinbefore stated, the price of live poultry in the territory named to the consumer has advanced from Eight Cents to Ten Cents a pound over what said price should have been had the defendant monopoly not been created and maintained and [fol. 1091] that said advance in price was solely due to the unlawful acts of the defendant, its officers and agents in arbitrarily fixing the price for live poultry to the ultimate consumer.

Wherefore plaintiff demands judgment as follows:

First. That the defendant corporation be dissolved and its charter vacated and its existence as a corporation annulled and its rights, privileges and franchises forfeited.

Second. That a receiver of the property and effects of the defendant corporation be appointed pursuant to the provisions of the statute with all the power and authority conferred by law and subject to all the duties and liabilities imposed upon receivers in such cases.

Third. That the defendant, its directors, officers, managers and employees be restrained by injunction during the pendency of this action from transacting any corporate business or in any manner transferring, disposing or interfering with any of its property or assets and that a temporary receiver of such property and assets be appointed with all the powers and duties of temporary receivers in such cases and that an injunction order restraining creditors and all persons commencing any suit or proceeding against the defendant or taking any proceeding in any action already commenced may be granted.

Fourth. That the plaintiff may have such other and further judgment or relief in the premises as may seem to the Court proper to grant with the costs and disbursements of this action.

Albert Ottinger, Attorney-General of the State of New York. Office & Post Office address: Capitol, Albany, N. Y.; New York City Bureau, 49 Chambers Street, Borough of Manhattan, New York City, N. Y.

[fol. 1092] STATE OF NEW YORK,
City of New York,
County of New York, ss:

Israel M. Lerner, being duly sworn, deposes and says: That he is a Deputy Attorney-General of the State of New York and one of the People of the State of New York; that he has read and knows the contents of the foregoing complaint; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true.

That the sources of deponent's information and the grounds of his belief as to all statements not made upon personal knowledge are investigations made by him upon complaints received by the Attorney-General's office in the State of New York against the defendant corporation and said investigation being made in his official capacity as Deputy Attorney-General of the State of New York and the testimony which was adduced before Hon. Harold L. Turk, Referee, appointed by an order of the Hon. Norman S. Dike, Justice of the Supreme Court of the State of New York, to take testimony of the defendant, its officers and employees in proceedings commenced by the Attorney General of the State of New York against the defendant corporation upon his petition for the purpose of ascertaining violations of the General Business Law of the State of New York by the above named defendant, its officers and agents, and upon the testimony and statements made by the witnesses called in connection with said examination and documentary evidence produced therewith.

Israel M. Lerner.

Sworn to before me this 25th day of February, 1926.
Henry Unterweiser, Notary Public, N. Y. C.

[fol. 1093] SUPREME COURT, KINGS COUNTY

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,
vs.
COMMUNITY LIVE POULTRY CORPORATION, Defendant

Defendant, answering the complaint herein:

1. Admits so much of the allegations contained in Paragraph First of the complaint herein, as state:

"That Albert Ottinger is the Attorney-General of the State of New York, duly qualified and acting as such and that, pursuant to an order of the Supreme Court of the State of New York, County of Kings, dated the 24th day of February, 1926, and duly entered in the office of the Clerk of the County of Kings on said date, he has been duly authorized to commence this action in the name of the People of the State of New York against the Community Live Poultry Corporation,"

but except as hereinabove admitted, defendant denies the allegations in Paragraph marked First of the complaint herein.

2. Denies the allegations contained in Paragraphs marked Third, Fourth, Fifth, Sixth and Seventh of the complaint herein.

Wherefore defendant demands judgment that the complaint herein be dismissed with costs.

Isidor Neuwirth, Attorney for Defendant. O. & P. O. Address: 291 Broadway, Borough of Manhattan, City of New York.

[fol. 1094] City and State of New York,
County of New York, ss:

Samuel Sahn, being duly sworn, deposes and says:

That he is the president of the defendant in the within action; that he has read the foregoing answer and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. That the reason why this verification is made by deponent and not by the Community Live Poultry Corporation is that the Community Live Poultry Corporation is a domestic corporation and deponent is an officer thereof, to wit, its President.

That the source of deponent's information and the grounds of his belief as to all matters not stated on his own knowledge are the books and records kept by said corporation.

Samuel Sahn.

Sworn to before me this 5th day of March, 1926. Samuel D. Turk. Notary Public, Kings County. Kings Co. Clk's No. 272, Reg. No. 7147. Certificates filed in New York Co. Clk's No. 303, Reg. No. 7241. Commission expires March 30th, 1927.

[fol. 1095] EXHIBIT 50

At a Special Term of the Supreme Court, held in and for the County of Kings, at the County Court House, in the Borough of Brooklyn, City and State of New York, on the May 14, 1926.

Present: Hon. William F. Hagarty, Justice.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,

against

SQUARE DEAL POULTRY CORPORATION, Defendant

This action having been duly instituted by the People of the State of New York upon leave being obtained in this Court for a judgment annulling the corporate existence of the defendant under Section 130 of the General Corporation Law of the State of New York upon the ground that the said corporation has violated the Laws of the State of New York whereby it has violated its charter and become liable to be dissolved by the abuse of its corporate powers, and the defendant having consented to the entry of judgment for the relief demanded in the complaint in form as entered herein and form as to be entered herein, plaintiff's costs having been duly taxed at Seventy 00/100 Dollars ($70), it is, on motion of Albert Ottinger, Attorney-General of the State of New York, attorney for Plaintiff,

Ordered, adjudged, and decreed that the charter or certificate of incorporation of the defendant, Square Deal Poultry Corporation, be and the same hereby is vacated and the existence of the defendant, Square Deal Poultry [fol. 1096] Corporation, be and the same hereby is vacated and the existence of the defendant, Square Deal Poultry Corporation, be and the same hereby is annulled on the ground that the defendant, Square Deal Poultry Corporation, has offended against the provisions of the General

Corporation Law of the State of New York, under which it was organized and has violated the provisions of Section 340 of the General Business Law of the State of New York; and it is

Further ordered, adjudged, and decreed that the defendant, Square Deal Poultry Corporation, its directors, officers, managers and employees be and they hereby are jointly and severally enjoined and restrained from transacting any corporate business or in any manner transferring, disposing or interfering with any of the property of the defendant, Square Deal Poultry Corporation, except to turn over the same to the receiver hereinafter designated in this judgment; and it is

Further ordered, adjudged, and decreed that Morris Gordon, Esq. be and he hereby is appointed as permanent receiver of the defendant, Square Deal Poultry Corporation, with the usual powers and duties enjoyed and exercised by receivers according to the practice of this court and all the statutes in such case made and provided and he is hereby authorized to take possession of and sequestrate the property, things in action and effects, real and personal, of the defendant, Square Deal Poultry Corporation, and to take possession of and sell all such property and distribute the same among the creditors, stockholders and other persons entitled thereto under the direction of this Court; and it is

Further ordered, adjudged, and decreed that said receiver before entering upon the duties of this trust execute [fol. 1097] to the People of the State of New York and file with the Clerk of this Court a bond in the penalty of Two thousand ($2,000) Dollars, with at least two sufficient sureties or a surety company, same to be approved by a Justice of this Court conditioned to the faithful discharge of his duties as a receiver and for the final accounting of all moneys and property received by him; and it is

Further ordered, adjudged, and decreed that the said receiver deposit all moneys received by him not required for immediate disbursement in the Brooklyn Trust Co., in the Borough of Brooklyn, City of New York and County of Kings; and it is

Further ordered, adjudged, and decreed that the receiver pay to the plaintiff, The People of the State of New York, through the Attorney-General of the State of New York,

through the Attorney-General of the State of New York the sum of Seventy ($70 00/100) Dollars, the costs and disbursements of the plaintiff as taxed by the Clerk of this Court; and it is

Further ordered, adjudged, and decreed that either party to this action may apply to this Court at the foot of this judgment for such further order or direction as may be necessary or may hereafter appear to this Court to be proper and just.

Enter.

W. F. H., Justice of the Supreme Court of the State of New York. William E. Kelly, Clerk.

Granted May 15, 1926.

William E. Kelly, Clerk.

[fol. 1098] EXHIBIT 52

Rev. Rothchild to work by Kaplans, 108th Str. Cor. 1th Ave.

J. Rosenman, K. Shapiro.

[fol. 1099] EXHIBIT 54

Rubin Weiner's Purchases from Shenckman

Oct.	3, 1930	16.80
Oct.	10, "	327.94
Oct.	17, "	620.
Oct.	24, "	617.
Oct.	31, "	419.33
Nov.	7, "	466.79
Nov.	14, "	441.98
Nov.	21, "	506.
Nov.	28, "	442.47
Dec.	5, "	637.70
Dec.	12, "	428.03
Dec.	19, "	390.48
Dec.	26, "	390.77
Jan.	3, 1931	416.73
Jan.	9, "	464.96

Jan.	16, 1931	476.41
Jan.	23, "	414.87
Jan.	30, "	433.80
Feb.	6, "	363.30
Feb.	13, "	322.94

[fol. 1100] EXHIBIT A

Nov. 20, 1931.

AARON STEINBERG, Witness

Direct examination:

The Witness: I am in the poultry business under the name of East Bronx Poultry Company. The owners of the market are Julius Steinberg, Aaron Steinberg and Morris Javitz. On Monday morning I went to the Dexter Poultry Company, 149th Street and East River, right near my place. There were two cars ready to be unloaded of live poultry, so I asked the man in charge of the cars by the name of Mr. Tardis if he would sell me four crates of chickens. I had my own truck, I would take them with me. There was no question of credit because I always used to buy on certain occasions and it was not a question of credit. He consented to sell me four crates of chickens. I went back to my place and I took my truck and came over to his place of business. Now in that place they do not use any crates because they slaughter poultry; so they take them out from the cars into iron cages. The iron cages hold about six or seven hundred pounds net. But anyhow he took out four empty crates, small ones. They weighed them empty crates and they get ready to start to fill them in with chickens to go onto my truck. So all of a sudden there was a telephone, from where I do not know; and within five minutes he turned back to me and said, "Mr. Steinberg, I am sorry, I cannot give you chickens. If I give you chickens I will have a strike in a few minutes." He says, "You got to go to the union, otherwise I cannot give you chickens." Then I left. After that I tried to get poultry at practically every stand in West Washington Market. On March 14th I tried to get poultry from Bert Frankel. Bert Frankel is a commission man. He told me

if he would give me a coop of poultry he would have trouble. I tried to get poultry from James N. Norris & Company. [fol. 1101] At one time, that was previous to it, I guess about a week before, their salesman, Mr. Wingfield, delivered me ten coops of poultry. The next time I go and I seen Paul Norris and asked him for poultry and he said, "Steinberg, what do you want me to do? Do you want me to have trouble?" He says, "Go back." I told him he sold me before and he says, "Do you want me to get in Dutch?" He said, "I can not give you any poultry." I tried to get poultry from Gerlach & Dinnerman. They gave me the same reason, they are finished. I spoke at Gerlach & Dinnerman to a salesman whose name I do not know. I tried to get poultry from the Palace Commission Company. The owners of the Palace are my brother, Julius Steinberg, Jake Bloom and Julius Bloom. I am in the habit of buying from the Palace.

Mr. Kaufman: May I understand, Mr. Oseas, is this the matter that was discussed before Major Daly some weeks ago?

Mr. Oseas: Yes.

Mr. Kaufman: Wasn't it agreed after the hearing that day, with Major Daly, which took almost all afternoon, that the information that Mr. Steinberg had with respect to the alleged refusal to get poultry, was not sufficiently definite, and it was agreed he was to go out with the Department of Justice man the next day, so that we would have an opportunity of definite dates and times and places, and the names of persons?

Mr. Oseas: That was agreed, and it has been done.

Mr. Kaufman: Didn't you promise to notify me the next day or a few days afterwards if there was any interference with his buying of poultry and I stated to you at that time that I advised this union that with respect to Mr. Steinberg, who had had a strike in his place of upwards of fourteen weeks, that they were not to interfere with the buying of poultry in any wise whatsoever, but that they had a perfect right to instruct their men who were members of their union not to load any of Mr. Steinberg's trucks. I think you agreed with me that my advice was properly given.

Mr. Oseas: Your Honor, will you allow me to develop the evidence?

The Court: Go on, I will hear what you have to say.

Mr. Kaufman: If your Honor please, you see we are [fol. 1102] here without any information as to what took place.

The Court: I do not, either, but I am here to see what it is. You will have an opportunity to put the whole situation before me.

The Witness: When I tried to get poultry Jake Bloom was in charge of selling on the railroad, and he told me, "Steinberg, you know I cannot sell you any poultry; if I sold you any poultry I would be tied up the next five minutes and I would not be able to take out another car." Since that time I complained. I know Mr. Amos, an agent of the Department of Justice. That is he sitting over there. Mr. Amos accompanied me to the West Washington Market. I attempted to buy poultry in Mr. Amos's presence. I went with Mr. Amos on two occasions. The first occasion I should say close to three or four weeks ago and the last occasion was about five weeks ago; I may be mistaken in a week or so. On each of those occasions every commissioner that I have approached in the presence of Mr. Amos had all told me, "I am sorry, I cannot sell you." I attempted to buy from the Independent Poultry Company and the Chelsea Poultry Company and James N. Norris & Company, Samuel Werner Company, Jule Koenig & Company, and Charles Frankel & Company.

Q. Will you give us the names of the men who spoke to you in each case?

Mr. Kaufman: Wasn't it agreed that Mr. Steinberg was to keep a very definite record of the name of every person from whom he tried to buy chickens?

Mr. Oseas: I am quite willing to testify as to the instructions I gave to Mr. Steinberg and Mr. Steinberg is here.

The Witness: I spoke to Jule Koenig, the old man himself, and to my knowledge he is the proprietor of the place; to Charley Werner of Samuel Werner, Inc., Bert Frankel of Sol Frankel, Inc., Mr. Price of the Manhattan Poultry Company; Julius Kastein, of Julius Kastein, Inc.; the Independent, the salesman I do not know—I know him by sight. After the hearing was held in your office at which

[fol. 1103] Major Daly was present, I again attempted to buy poultry in West Washington Market and Mr. Amos accompanied me. After I was unsuccessful in West Washington Market, I made several attempts to buy poultry in Philadelphia and in one case I succeeded. I went back there again and he told me that he would not sell my any poultry. The name of the man is Mr. Rabinowitz of Risser & Rabinowitz. I tried Leavitt and talked to him. I talked to Mr. Leavitt, I do not know which one. Mr. Leavitt told me that if I come in to him in the morning, early in the morning, around six o'clock, he will give me some poultry, otherwise he will not give me any poultry. I then went for poultry to West Virginia. I did buy there once from the City Produce. I did not try to buy any more there.

After that I went over to the railroad company, the New York Central, and I had asked them if they could possibly give me a siding in the Bronx on a lot of chickens to be sent in, so that I could get in the car and unload it myself with my own crates and my own loaders. However, after considerable attempts, about two weeks, they finally gave me a siding at 164th Street about fifteen blocks from my slaughterhouse. That is the Melrose Yards. And then I was introduced by Dave Bloom to Mr. Roscoe C. Wood. That is Mr. Wood sitting at the first bench. I spoke to Mr. Wood and explained the situation and told him that if he can get me a car of poultry at 164th Street, I can save the shipper $100 on each car because the union men's crates they only cost $1.65 for each one, and I can get my own crates and use them about twenty or thirty times. If I had to go and hire crates from the New Jersey Coop Company, they will charge me $1.65, but in my way I will be able to save the shipper $100 a car. Mr. Wood came up to my place of business and he called up Jerpe Poultry Company in Lincoln, Nebraska. He spoke to Mr. Humphrey and he explained the [fol. 1104] situation and he agreed to ship a car of poultry to me. In fact that car of poultry had been already rolling to New York. At Detroit I think it was diverted into the Melrose Yards and that was how it got into the Sixties. This poultry was consigned to Roscoe C. Wood, that was before I paid the draft.

I have seen this paper before. This represents the last car of poultry to the account of Steinberg Brothers. The

other said that this commissioner gives assent to the car of poultry where it goes to, from whom and from the destination. The poultry was consigned to me by Mr. Wood. It was supposed to arrive last Friday. With respect to arrangements made to deliver the poultry to my market, Mr. Wood told me Friday the market was last week kind of low, so he suggested to wait until Monday and the market might be a little better; we will unload the poultry Monday. The draft was not in. The draft came in for the poultry Monday and I agreed to it. Meanwhile I ordered feed for the poultry; it was charged to me and I have got a bill for it.

With respect to the crates which I purchased from Newark, I approached Mr. Dale of the New Jersey Coop Company and I asked him whether he is going to let me have crates, and I made him the proposition to get from him the crates a little cheaper than he would charge at $1.65, and he said he can not give them to me. He refused to give me a load of crates. He stated that he objected because I had no union men. I was compelled to purchase crates myself. I bought my crates from the National Box & Lumber Company, Newark, New Jersey. I bought 120 of them and I paid $1.65 f. o. b. They were delivered to me Friday but they went back. The delegates, Charley Herbert, Harry Shoner, and Dave Kaufman, and another fellow, I do not know his name, they came there—I can recognize the men I have named. They are here. When the boxes arrived at my market, I was up to the railroad, that was Friday, seeing the condition of the poultry. After I came [fol. 1105] back I was ready to get the crates but they would not take them off, they made me pay C. O. D. because it was the first time I did business with them. When the boxes came there I could not get them and the driver of the truck took them back to the office of the National Box and Lumber Company.

I know Mr. Edwards—I do not know who is the proprietor of the National Box. I rang them up and he refused to deliver them. He said he can not do it. I spoke to him and he said he could not do it, and they went right back with the crates. After he called again and he said, "Steinberg, what am I going to do?" He represented himself to be the proprietor of the National Box Company. "Steinberg, what am I going to do." I said, "What are you go-

ing to do?" He refused to leave them. I sent my truck Friday, got the coops and I have taken them up in New Jersey and I brought them into my place with my own machine and truck. That was at night.

I attempted to take the poultry from the Melrose Yards on Monday morning. That must have been seven o'clock or half past six in the morning, I got up to the place and I saw there was about ten or fifteen people whose faces I know very well but whose names I do not know. They looked kind of suspicious. I know them well and I know what their function, but I did not have any names. I do not know the names of the persons. Paul Kramer was one of them. A man by the name of "Cockeye" was there this morning and he was chased by detectives. I do not know his right name. These men did not talk anything. I just didn't pay any attention to them. I went in my place and waited until about nine o'clock and I called Mr. Wood and asked if the draft was there. He said, "Yes, a draft for $3,500." I said, "All right, I will get a check off my brother as soon as possible. I cannot get a check certified before ten o'clock, [fol. 1106] and we will take up the draft and take the poultry." So he said all right. Mr. Wood told me to certify the check for $3,500 and bring it over to the Chatham & Phenix National Bank and he will come up there to get the money and then go up to unload the poultry. He did not say he was anticipating any difficulties at that time.

At the time that I made arrangements to purchase the poultry through him as the commission man, or as a shipper's agent, he did not there say anything about future union trouble that I might have. I was under the impression that we would have no occasion for any trouble after the hearing in Mr. Oseas's office, and they told me Mr. Kaufman had spoken and said that there was no interference in unloading the poultry. Mr. Wood did not enter into any agreement with me to the effect that if there was union trouble he would not have to deliver the poultry. Not a word was said about that at all. I called up my brother and he gave his clerk a certified check to take up the draft. We sent over to take up the draft and they told us in the bank that that was taken out already.

Immediately I made an attempt to get in touch with Mr. Wood. I called him and I could not get him on the tele-

phone. A gentleman answered, an elderly gentleman, I could hear him through the sound of his voice, and he told me Mr. Wood was out until about two o'clock. Then I first got Mr. Wood and he told me, "Steinberg, I cannot give you the poultry". He said the delegation came to him and he told me, "If I give you the poultry I will not get a shipment in New York". He did not say that he had been given any further threats outside of that. That is what he told me. I was rather disappointed. I had people ready to work on the crates and on the poultry. I couldn't get anything. So I took my machine around there to the car. The car was on a siding about ten or fifteen blocks from my place of business. Mr. Caffey is the name, he lives in Lin-
[fol. 1107] coln, Nebraska. He knows that I got orders. Mr. Wood called and he says that there were a couple of men, four or five, here—they would tell the shipper that they were going to tell him that he would not get another car of poultry here, he is not going to ship any poultry to New York any more.

On the way back I met Mr. Dave Kaufman. I did not talk to him, just passed with my car. Mr. Gardi told me they threatened him—"I cannot give you". He did not say anything about knocking his block off. Mr. Edwards told me that this was mentioned that they threatened to destroy his truck and he had to go away.

One man was working for me, Richie Brown. He is not here now. The other one is Fred Sumara. He is here. Mr. Brown had his lip split. I didn't see how it happened. I did not see any people talk to Mr. Brown. He ran into the office bleeding from his mouth and he says they got him all right. I ran out and the only people I see was Mr. Harry Shomer, a car and Harry Shomer was in it, and there were a number of people in there; I couldn't say. They ran right away.

By Mr. Kaufman:

The Witness: I closed up my business ten weeks ago. It was this way, I couldn't obtain any poultry, I am simply getting in a few crates of poultry. When I get a few crates of poultry I can open my place and work, and if I cannot get any I close.

I did not refuse to employ any union people before I closed up my place. Prior to the time of closing my place

I had all the time union men. I closed the place because business was dull down there and I done about fifty per cent of what I had done before, and I made a request to the union to take off some men and some rabbis and they [fol. 1108] refused. When they refused, I was forced to close up. I cannot stay in, I lose too much money; my expense is enormous and I cannot exist. As a matter of fact, when the union delegates refused to comply with my request to take off some of my men, I closed my place. Then I immediately reopened my place. As I said, my place is still closed; it may be open several days during the week. I have been doing very little business in the last ten weeks. I have negotiated with the delegates without exaggeration half a dozen times, pleaded with them that it would be too much if I have to have so many men. In my neighborhood, within two blocks of my store, there is one other market. I do not know how many union men he has.

I remember the day we were there before Major Daly I told Major Daly about some of these instances where I couldn't get poultry. Major Daly asked me for the time and place and the person from whom I got poultry or tried to get poultry. I couldn't tell him either the time or the date nor the person. I told him to the best of my recollection. He didn't tell me that was not sufficiently definite and for me to go out and make a definite record as to the persons from whom I attempted to get my poultry. I can't tell you what Mr. Oseas told me. Mr. Oseas told me he would send a man with me for the purpose of obtaining a record.

Mr. Kaufman: Let us agree as to what happened. Didn't we agree that you would send a Department of Justice man with Mr. Steinberg so that we could be definitely informed as to the time and the places of these alleged refusals?

Mr. Oseas: That is my information.

The Witness: The Department of Justice man went with me after the hearing in Major Daly's office once. Mr. Amos was the Department of Justice man on that occasion. He is in court. About 10 days after the hearing before Major Daly Mr. Amos went with me. Between the time we were in Major Daly's office and the time Mr. Amos went with [fol. 1109] me, I made efforts to get poultry in some places.

I kept a record of the places that I went to, and the per-

sons to whom I talked. I know the places; I didn't make any record of them.

Q. Have you got a record showing the dates and the places you went to, and the persons to whom you talked?

A. I will show you the places and the persons to whom I spoke.

The Court: Answer the question, have you got a record that you took at the time?

The Witness: No, I did not.

Q. What did you mean by telling us that you would show us the places and the persons to whom you talked?

A. I wanted to get poultry at 110th Street, at K. Gellis. They call the place the 112th Street Live Poultry. He used to give me two or three coops of poultry Sunday mornings. Many occasions I got poultry at the Westchester——

Q. You told us all that before, Mr. Steinberg.

A. I did not.

Q. Then you are telling us now the places where you did get poultry?

A. Yes, where I did. At night so no one could find out.

The Witness: I never did tell anyone that I was going to break this union. I am positively sure. I testified that I and my brothers are in partnership. In addition to that, I have got a man by the name of Javitz; he is a schochet. There was no special arrangement made with him; he is a stockholder of the company. I think he owns ten shares. I couldn't tell you how much he paid for them. The entire stock is held by my brother until we pay. We did not pay for it. In order to pay for it. I own 33-1/3, and I did not pay for it; it is held for me. Probably I purchase and pay for it. If probably I make a success of something, or I do [fol. 1110] business; or I have profits, probably I pay for it wherever I get the money. So far as Javitz is concerned, he has the same arrangement. Probably if he gets something he will pay for it. Probably he did pay, but I do not think he paid anything, but maybe he did, I do not know. There was no arrangement with Javitz that he became an owner of some stock so as to say he would avoid union rules. He become a stockholder in our business I think some time in September, 1929. Up to the time I closed my place about twelve weeks ago, four union men were work-

ing for me. One name is Mike, the other name is Bill, and one name was Moe and the fourth by the name of Harry Zuckerman. Those four men came there together. They changed several times. I cannot tell you exactly how long they were employed there. Like Mike, for instance, was working when I started and Moe was working alone. He was sent in during—one was sent away and Moe was sent in; I don't remember the date.

Q. A moment ago you told us these four men were working for you at one time, at the time you closed up your place.

A. Yes.

The Witness: I had those four men on the payroll, paying them each week. Really I can't recollect how long those four men were working together for me; I never kept track of that.

Q. Approximately how long?

A. I just gave you the number.

Mr. Rice: If your Honor please, if Mr. Kaufman is trying to prove that Mr. Steinberg's shop is a non-union shop, we will concede that it is a non-union shop. If that is what you are trying to prove, I will concede it.

The Witness: To my knowledge, there is not any more Chamber of Commerce.

Q. And so your complaint against the union is that you want to come to an agreement as to whether you should continue as an open shop, is that correct?

[fol. 1111] A. It is not an agreement, simply could not live up with their dictation, that is all.

Q. What do you mean by that, "couldn't live up to their dictation"?

A. They dictated to me that I should have so many men and I couldn't afford it.

The Witness: I wouldn't do it, therefore the union officials and I have been unable to agree and I have been attempting to do business without any union men.

(Examination suspended.)

[fol. 1112] (Exhibit A Continued)

Roscoe C. Wood, called as a witness, being first duly sworn, testified as follows:

Examined by Mr. Rice:

The Witness: I am a broker and partly a shipper's representative. My office is at 448 West 14th Street. I work independently. I act as agent at various times for various companies. I ordered a carload of poultry from Lincoln, Nebraska, on behalf of Mr. Steinberg. I believe it was a week ago today, from Mr. Humphrey, of the Jarpe Commission Company. That carload was shipped. It arrived on Friday, May 9th. That is the wrong interpretation that I want to correct. That carload of poultry was in no way purchased by Mr. Steinberg. In other words, it was consigned, the car to me, and it was to be taken by Mr. Steinberg, if he paid the draft; or in other words, the car was in my possession until the draft was paid. That is the usual form of shipment. The feed of that poultry while it was in the car I think was charged against the car. I have seen these papers. One of them shows that Mr. Steinberg paid for the feed and one of them does not. The car was held up in the Melrose Yards.

Q. Were you willing to deliver?
A. Yes and no.

The Witness: I already explained to Mr. Steinberg that I was not going to enter into any mess with it when he came to negotiate for the car and before I ordered the car. I had a verbal arrangement with him by which I was not to deliver if there was any union trouble. I thought there would be union trouble because his brother refused to deliver him poultry. He told me that Mr. Jake Bloom was interested in the Palace Commission Company. I got the information through Mr. Jake Bloom. I had not talked with any union representative before that.

[fol. 1113] The first time I talked to the union representative in regard to this carload of poultry was yesterday morning. A telephone call came to the office. I don't know who called and I didn't ask him. I believe I did ask him who he was and he wouldn't give me the name. He said, "You got a car of poultry up in the Melrose Yards,"

and he said, "You are going to have a lot of inexperienced help unload this car. It is up to you whether you want to load it up there or not." I don't remember whether he said he was coming up to visit me. Thereafter, I had three, four or five men come in my office. There is only one gentleman in this court that I can recognize, but I would not know him possibly at that time. I saw this gentleman before at the New York Central Live Poultry Yards, the gentlemen sitting right there (indicating), Mr. Rosenstein, but he was not in my office. These other men were not in my office yesterday. I cannot recognize any of them. I talked to you over the telephone yesterday. If I told you over the telephone that I was positive that I would not recognize a single man that came to visit me, I must have meant what I said. I talked to them about two or three minutes, that was all. They asked me whether I wanted to use inexperienced help in unloading the car of poultry, and whether I wanted to take the risk of having a lot of broken legs and broken wings and probably have a lot of them escape. They did not tell me that if I unloaded that carload of poultry that I would never be able to deliver another carload in New York. I don't remember just that conversation. They told me that I should not take the chance of getting in any mess with anybody and taking a chance of not having my poultry unloaded or something to that effect. They did not tell me that if I delivered that carload of poultry that the shippers whom I represented would never be able to deliver another carload of poultry in New York. They did not say anything like that. It was [fol. 1114] understood that Mr. Steinberg was to pay for the carload of poultry before it was unloaded. The difference that it would make whether some poultry was damaged by inexperienced help while being unloaded is that there is always a certain amount of risk from deductions from poultry while unloading it. The certified check would not cover a carload of poultry. There is a balance that is due me after the draft is paid, and after the freight is paid. He had not undertaken all the responsibility of unloading. I don't know anything about his having arranged to get his own crates or anything like that. He told me that he would guarantee the shipper a saving of $100 against coops, cartage and unloading. He said he would make that for the shipper. When I told you that I was positive that

I would not recognize any of these men that visited me, I did not know I was called upon to identify them. There is no way I could identify them. I didn't have a vivid recollection in my mind as to who visited me.

When I made the arrangements for the car to be shipped here I thought the men to unload are to be experienced men; I did not know anything about Steinberg's men or what he was going to do. When I ordered the carload of poultry I thought everything would be all right. The understanding between me and Steinberg that if I did have union trouble that I would not have to deliver was after I learned of that. I talked to Steinberg probably four or five times, maybe half a dozen, maybe more than that. He ordered a carload from me which arrived May 9th—about a week prior to last Saturday if I am not mistaken. I do not believe there was anything said about union trouble up to that time. The first time anything was said about union trouble was on last Tuesday or Wednesday, also yesterday, I recall very specifically about that. I had a conversation with Jacob Bloom. He told me I had better use my own [fol. 1115] judgment. It was yesterday. I told Steinberg if he did have any trouble in unloading, I was not going to mess into it.

I talked to Mr. Jacob Bloom, I think it was after I received a telephone call. I said I was not going to get into any trouble with anybody; that my life was going along just as peaceable as possible, and that I was not going to take any chances in unloading and getting into any mess. I talked to Mr. Bloom about this matter the first time negotiations were made for the car of poultry. He was there with Mr. Steinberg. He said everything will be all right. He knew that Steinberg might have union troubles. This delegation of men visited me at my office on 14th Street, in a comparatively small room. I talked to them two or three minutes and I told you over the telephone yesterday I would not recognize them again. I am not afraid to identify them *them*. I told Steinberg I did not want to get into any mess with any union.

I saw Mr. Rosenstein at the railroad yards on several occasions. I positively did not see him relative to this shipment of poultry to Steinberg. I have not seen him within the past two weeks. I don't know Dave Kaufman; never have seen him to my recollection. I do not know Arthur

Herbert. I am sure, and never heard the name. I have not heard the name "Tootsie" Herbert. I have been a shippers' agent three years, not the entire time; not entirely in live poultry. Live poultry is only a side line. The first time I began to represent poultry shippers was in 1928. I did not have constant contact with the poultry industry from that time on. I told you it was only a side line, live poultry is a side line. I have never heard the name, Charlie Herbert.

Mr. Rice: Will you stand, please?

[fol. 1116] (A person stands.)

Q. Have you ever seen that gentlemen, Charlie Herbert?
A. No, I did not know him until you pointed him out to me and mentioned his name.

Mr. Rice: Mr. Shomer, will you rise?

(A person stands.)

Q. Have you ever seen Harry Shomer?
A. Never seen the gentleman nor heard of him.

The Witness: I have never employed union men. I have no men. That there could be such a thing as union trouble was very easy to suspect from conversations, what was told to me. The reason this car was going up to the Melrose Yards rather than the West Washington Market was because it was adjacent to Mr. Steinberg's place. None of these men nor any member of the Schochtims' Union ever threatened me.

The Court: I cannot understand why you did not deliver to him the car of poultry that he was paying for.

The Witness: Well, your Honor, there were reasons I believe. One reason is that he was supposed to pay that draft at ten o'clock. I waited until twelve before I took the draft up. It was five minutes of three, which I can prove by a man in my office who does some work for me—it was five minutes to three when the check, instead of being tendered to me, it was shown to me, the check for $3,500.

The Witness: That carload of poultry was turned over to the Acme Commission Company. It was sold on consignment, approximately the arrangement I had with Mr. Steinberg. I would like to explain, don't get confused, Mr.

Steinberg did not purchase anything. This car of poultry was a consigned car. The car came into New York last Friday. When he wanted to take it, we agreed it would be better to wait until Monday and the price would be better. I did not sell this carload of poultry to the Acme Commission Company; I turned it over to them. The man who dealt with me there is Mr. Louis Spatz. I do not believe [fol. 1117] Mr. Steinberg's name was mentioned by the group that came to the office. That car of poultry was mine wherever I chose to place it, as long as the draft was not paid. I knew last Friday that there was a possibility of union trouble if I turned this car over to Steinberg. I did not tell him last Friday or Saturday that he couldn't have the car, but the understanding between us was that he should wait until Monday and the price would be fixed by the Monday market. When Monday morning dawned the situation had not changed insofar as my relations with Steinberg were concerned. By reason of what Bloom had previously told me, I had every reason in reality to expect that if I delivered it to Steinberg the labor union was likely to make trouble, although he assured me it would not. I took the car of poultry away from Mr. Steinberg on last Saturday. He called me on the telephone and told me that he was going to pay for it, and I said absolutely nothing doing. There was an agreement that the rate was going to be fixed by the Monday's market, that was when I entered into an agreement to that effect. I just wanted to correct the impression that Steinberg purchased that carload of poultry. That was not a purchase of poultry, it was a consignment of a carload of poultry to me by the shipper under instructions until the draft was paid.

I turned this car over to the Acme Commission Company yesterday forenoon about one o'clock. Steinberg had told me that he would have a certified check which would be presented to me at ten o'clock in the morning. There was no other information but ten o'clock in the morning. The reason for turning it over to the Acme Commission Company was that it was a car of perishable goods, while the draft was not paid that was lying in the Chatham & Phenix National Bank. That is the only reason, and the object of [fol. 1118] moving the car. I would not say whether the visit of the men to my office had anything to do with it or not. I was not going to get into any mess with any unions,

or with any labor troubles and I told Steinberg I was not going to get into any. I told Steinberg yesterday that the reason I was not giving him the car was because he did not pay the draft as he agreed at ten o'clock. I called his number and called and asked for Steinberg.

At the time of this visit to my office there was another man in the office, Mr. Coggeshall, who is here. Whether he heard everything that went on there, I do not know. He was reading the paper when they came in.

[fol. 1119] CARMAN GARDI, called and sworn as a witness, testified as follows:

Examined by Mr. Rice:

The Witness: I am employed by Adams Transportation as a truck driver. I have been a member of the union 478, Newark, about two years. I have always been in that local of the union.

I drove a truckload of boxes from Newark to New York last Friday for delivery to East Bronx Poultry Company, which is Steinberg's company. I laid there for about two hours, waiting for him to come in. The load was C. O. D. When it arrived, he was making a call to borrow some cash money. My load was C. O. D.

In the meantime, while I was waiting, he walked out and told me he had no labor trouble. Well, I waited there until about two o'clock, and I believe a young fellow steered up alongside and said, "You a union man?" I said yes. He said, "What local are you a member?" I says, "478 Newark." He said, "Do you know there is labor troubles in this place?" I says, "no, I am laying here about two hours." I said, "You are positive about it?" He said yes. He said, "You are going to deliver the load?" I said, "No, I am taking it right back; I am a union man and I am not going to go against myself; I am not going to put myself out of a job" and was driving away when Steinberg said, "Wait a minute, where are you going?" I said, "I am going back with the load." He said, "Wait, wait." I continued on. He did not tell me to go into the office and telephone to my boss or to Mr. Edwards. I did talk to a girl in our office in Newark, over the telephone. I do not

know what you would call her, but she is right across the way from Edwards. I told her that I found out there was labor trouble, and I would not deliver the load. He [fol. 1120] asked me if I was going to deliver it and I said no. She got hold of my boss, Joseph Kielan and I talked to him over the telephone. I explained to him and he told me to hold the wire, he has something to say in the office, to whom I did not know. He says, "All right, take the load back." When the owner of this Bronx Poultry called up he didn't say he had labor troubles at the time. I was asked by Kielan if I was going to deliver the load and I told him no, that I was a union man and I am not going against my job.

I did not ask this union man who told me to show his identification card, or tell me who he was. I never saw him before. I did not have to ask him; I knew he was a union man. He would have nothing to say about any labor trouble if he was not a union man. He did not say "I am a union delegate." I cannot identify any of the people that I saw at Steinberg's market here in this room. I have never seen the men whom you name as Tootsie Herber, Charlie Herbert, Harry Shomer, David Kaufman, Rosenstein and Kessler. I am positive that none of these men were in that group.

[fol. 1121] Richie Brown, called and sworn as a witness, testified as follows:

By Mr. Rice:

The Witness: I am employed by Mr. Steinberg to put chickens in a box. I was there yesterday morning. I was hit, and the other employes were standing on the corner, cleaning the Dodge car. One of the fellows come from the union, a truck driver, a union truck driver, and he asked me if I was a union man, so I said no. He said, "You had better go in and take off your overalls and get out of here because I want that job." He said, "You are not going to work here any more." I didn't say anything but he smacked me. He was Bill Kramer, but he is not in court here. He had worked for Steinberg's firm, but when I do not know. Whether he is a member of the union I

don't know. I am nineteen years old and am working for Steinberg about three days. He hit me in the lip. It is all festered inside. I was in front of the garage, talking to a couple of fellows up there when he struck me. There was a few fellows there at the time, I don't remember them. Before I worked for Steinberg I worked in a gas station.

By Mr. Kaufman:

The Witness: This man who hit me did not tell me that he had been out of work for fourteen weeks, but he did tell me that he was about to be dispossessed, that his family was starving. I did not tell him that I didn't give a darn, that my sister's children were starving, too. I says, "I got people home, too." He told me that my being a non-union man, I was taking away the bread and butter from his children and they were about to be dispossessed. I did not have an axe in my hand at that time. There was an axe by my side, in my belt. I didn't tell him to go to hell before he smacked me. He was a very big man. I don't know how long since he has been working at Steinberg's place. I didn't even know of him. The first time I seen [fol. 1122] him he drove up in his car. I still do some work for Steinberg. I did not know there was a strike in Steinberg's place. I saw some men walking up and down and picketing, but there was no strike at the time when I was working there. I work there four days. I did ask what those men were doing in front of the place. People told me they are on strike. It is a non-union shop. Somebody told me that the union was trying to put union men in there. I do not call that a strike.

[fol. 1123] JOSEPH C. COGGESHALL, called and sworn as a witness, testified as follows:

Examined by Mr. Rice:

The Witness: I am a poultry commission man, dressed poultry only. I have no office at present; my office was in Washington Street and that was closed up. I am in different places.

I was in the office at 448 West 14th Street with Mr. Wood yesterday morning, when four or five men came in there.

If there was a telephone call shortly before the men came in there, I didn't hear it. I don't think Mr. Wood told me a delegation of men was going to see him. He did not mention anything about anticipating union trouble. These men came in there. When they came in I was sitting there reading the newspaper. I didn't pay much attention to it because I was not interested in that line of business. I heard them—all that I can remember those men said, were that inexperienced men would cripple up the chickens and poultry taking them out of the car. I was not in it, so I did not listen. I read my paper. I did not look at the men. I did not pay any attention to who they were. I don't think I would recognize any of them. I never saw one of those men here in court before in my live. I would not hear of them because I am not in that line of business.

[fol. 1124] FRED CIMATO, called and sworn as a witness, testified as follows:

Examined by Mr. Rice:

The Witness: I am employed by Steinberg Poultry Market. I saw Richie Brown assaulted yesterday morning. He was standing up in the corner; I was cleaning the car; so this guy Charles Kramer, he came over and asked me would I clean his car. I says, "No, that car needs a paint job." So he says to me, "Do you have anybody with you?" I said, "Why?" He said, "You got any protection?" I says, "Yes, plenty of protection." So he walked up and seen Richie Brown, so he started talking to Richie Brown and all of a sudden he hit him, so I ran down quick into the chicken market. There was only men from the garage there. There was nine union men there. I do not know whether they were union men or not. None of these men in court were there that I know. I did not hear what was said between Kramer and Brown; I was cleaning the car. He says to me, *am* I am a union man. "Take off the overalls and go home." Charley Kramer was the only union man who appeared there since Friday. None of these men were with him. The only time when I know was when the man hit Richie Brown. I do not know Charlie Herbert. I have not seen him around the place.

By Mr. Kaufman:

The Witness: I have worked for Steinberg four days. I get four dollars a day and I worked from about seven to half past three P. M. I did not know Steinberg before I went to work for him a few days ago. I know that that fellow's name was Charles Kramer because I heard his name. I heard them say it was Charles Kramer. I know how his face looks. He had overalls on and he had a union badge on. I only know what his face looks like. He looks like a tall man, kind of stout, got a pair of overalls and a hat and a union button.

[fol. 1125] Somebody said that he was Charles Kramer. Richie and Mr. Steinberg said he was Charles Kramer. Mr. Steinberg did not see the man who hit Richie. I could not hear what this man was saying to Richie Brown because he was about ten feet from the other car. Richie Brown had an axe on him, on the side. Before Richie Brown got hit, Richie Brown did not pull out the axe. I was watching him, but I could not listen what was said. Before Richie Brown was hit I was cleaning the car, and I was paying attention to nothing.

[fol. 1126] JOSEPH L. KEELEN, called as a witness, being first duly sworn, testified as follows:

By Mr. Rice:

The Witness: I am in the trucking business at 354 Adams Street, Newark, New Jersey. We do trucking for the National Box & Lumber Company, Newark. We were engaged to haul a truckload of crates by that company on Friday of last week. I could not say where this truckload was destined for. I sent the trucks up there in the morning and they sent them out. I don't know where they go. It was sent some place in New York. What happened after the driver arrived at the market—I got a telephone call that there was a strike going on there and they would not receive the goods. First Mr. Steinberg, the man that ordered the truck, telephoned. He told me the driver pulled away with the load and didn't want to deliver them. We asked the reason why. He said there was some trouble

here. I asked what the trouble was. He wouldn't tell me what the trouble was so I asked him to get in touch with the driver if he could get him and he didn't want to leave the place.

The driver called up a little after this gentleman hung up. His name is Courtney. He said there was a strike there and I told him not to deliver the goods and he came back. We didn't know there was a strike in the place or the stuff would not have been sent over there in the first place. Over the phone I asked him if he saw the delegate and he said there is a fellow here, so he put him on the phone. I asked his name and he didn't give it. I asked him who he was and he said he was a delegate of some chicken handlers or chicken drivers or something like that. He said the name was not necessary to give. He said we are on a strike over here for a few months and you cannot deliver that stuff and he said take it out of here, so I told him to put the driver on the phone. The driver got back [fol. 1127] on the phone and I told him to bring the stuff back. Mr. Courtney said in my office it is a good thing I was a union driver or I would have gotten a beating. It was in no ways a report or anything but just as we were talking together.

By Mr. Kaufman:

The Witness: I would not say whether this man who talked to me on the telephone and said he was a delegate, said I could not deliver it or I should not deliver it. I did not want to deliver it anyway as long as there was a strike there. I am a union man myself. If I knew there was a strike in this man's place I would not have delivered it. There wasn't anything reported to me only what was reported on the telephone. When he got back to my place he said he thought it was a good thing that he was a union driver, that if he was a non-union driver he thought there would be trouble. He didn't say that anybody threatened to beat him. He said the reason for not permitting a delivery was on account of there being a strike there. He said they asked him if he was a union man and he said yes, and somebody made a crack that's a good thing you are, and he was the one that told me that maybe the truck would have been broken up and him too if he was not a union man

but that was not in no way of a threat from anybody over there. I do not know this man sitting behind you, who you say is Arthur Herbert. I don't know any of the men whom you have pointed out and named here as Shomer, Kessler or Weissler. I haven't spoken to anybody about my testimony outside of Mr. Rice.

[fol. 1128] PHILLIP M. BETTS, called as a witness, being first duly sworn, testified as follows:

By Mr. Rice:

The Witness: I am a freight agent for the New York Central Railroad. I first saw Steinberg in my station office on the 24th day of April. He came in in order to get a carload of poultry in our yards. He said he intended to ship a carload and I told him that we have no facilities for handling the car. However I referred him to our general Eastern Dairy Agent and he told him he would try to make some arrangements for him at the old Melrose Yard and he took him up there in his car and he was satisfied with that location. Steinberg said he was making arrangements to ship a load of poultry from the West, but he did not say who the shipper's agent was.

Later on I had a conversation with Steinberg and Roscoe C. Wood, about ten-thirty or eleven o'clock on May 9th, Friday. Wood said the car was consigned to himself and the car arrived about the time he and Steinberg were in the office. I understood that load of poultry was going to Steinberg, but he did not say anything about delivering it to Steinberg. On Friday the car came in too late and he was going to handle it on Monday morning. The car was all ready to unload it at that time, last Friday, but it was not unloaded then. It was too late on Friday and the next day being a Saturday which was no poultry day they would unload the car on Monday morning.

Wood and Steinberg and I discussed the nature of the delivery of the car. Wood and Steinberg came in the office together and inquired about the car and I told them it had just arrived. They said, we had better go out and take a look at it. I said it looks like a pretty good car of poultry

I guess. We went up and looked at the car and from con-
[fol. 1129] versation they were going to unload the car Monday morning. Of course you must understand this car was billed to Wood and before I could have delivered this car to Steinberg it would have been necessary for me to have an order from Wood to deliver it to Steinberg. On an order from our Eastern Dairy Agent the car was reconsigned to 60th Street.

[fol. 1130] AARON STEINBERG, recalled.

(Testimony given on May 16, 1932.)

By Mr. Rice:

The Witness: I know Charley Herbert. He is this gentleman here (indicating). I saw him Friday morning in my place and Friday afternoon near my place outside. In the morning he came inside and saw some poultry there and told me, "Oh, you got poultry now; I will fix you" and he went right out. There was a big machine outside, a Cadillac. Some people I couldn't see were with him. They drove right off, about four I guess. He came back again in the afternoon. Then I saw the same people distinctly, Harry Shomer was in the car, Dave Kaufman and one of the Herbert brothers. No other men that I see here. Outside of the market, they pulled alongside of empty crates. They spoke for a while to Gardi, the driver from Newark, New Jersey, who delivered the coops. I don't know what was the conversation. I didn't see them talk with anybody else. The driver pulled away. I said, why do you pull away. He said I cannot give you the coops, I am afraid. I said, wait, I will get your boss on the telephone and talk to your office and after I got the National Box & Lumber Company in Newark the man went away. The driver did not talk over the telephone. I asked him to and he refused.

I have seen David Kaufman and Harry Shomer and Charles Herbert at other times within the past two weeks at my market. They used to pull over sometimes, Harry Shomer with Dave Kaufman, sometimes individually come in the place, look around and went out. They said, I see you have poultry, but nothing about fixing me for it. The

only one that said that was Charles Herbert, on Friday morning. I met Dave Kaufman at the Melrose Yard Monday morning. He was also near the car of poultry with [fol. 1131] another man. He did not say anything to me. He was at my market within the past two weeks three times. Charles Herbert was at my market within the past two weeks twice on Friday, once inside the market and once outside the market and twice before Friday. Harry Shomer was a little more frequent. He rides in a different car. Max Kestler was over Monday morning, when they beat up that young fellow, and Harry Shomer was there in the car about half a block away. I haven't spoken to these people. The only one that spoke to me was Charley Herbert in the morning.

I testified here in court last Tuesday and on Wednesday they stole my truck. I took my boy, Samato, one of the fellows that worked for me, about eight blocks away from the market. There is an empty lot. I took him over there and told him to fill a few bags with sand and I will come and take it. I came back to the place and I was reading the paper and he came in pale as a ghost and said, Steinberg they jumped at me. I said where is the truck. He said they wanted to hit me and grabbed a big rock and I beat it. I looked around the neighborhood, I couldn't see it and I went to the Police Station and reported the car. That was about 11.30 on Wednesday. About five o'clock somebody rung the telephone and said go for your truck, it is right near Frank Newman's place. I do not know who rang me on the telephone. He just said a few words and left. I called up the Police Station and asked if I could go there. They said yes. I went over with Mr. Jaftas. When I came over the car was standing there. I went over there and looked at it and the motor was broken to pieces, absolutely demolished with an axe.

The motor was broken with a hammer or axe. The radiator was smashed. The wire coils were smashed. Everything was smashed, so I notified the Police Station and asked if they wanted to come and look at it. They said no, you can tow it in yourself, so I towed it in.

[fol. 1132] By Mr. Kaufman:

The Witness: The car is a Graham-Dodge, one ton, 1927 model. I have been running it continuously since 1927.

That truck is now in my place. I kept it in the back of the market, I got a spare room I keep my trucks all the time there. I claim my truck was broken between 11.30 and 12 and until about 5 this last Wednesday, day before yesterday. That was after I took this boy down to a lot to get some sand. You can see this truck in my place. It is up there now.

I saw Max Kestler up near my place Monday morning. It was at the time when that boy was hit. He came into the market and was bleeding so I jumped up to see who was there and I saw less than a block away Harry Shomer's car there, and I saw Max Kestler distinctly. I am positive about that. I saw Max Kestler on 148th Street and Jackson Avenue.

I had a meeting with Charles Herbert and Shomer about a week ago at West Washington Market. The subject of my meeting was not settling the strike in my place. There is no strike in my place. I wanted them to give me union men. They said I should take three men. I explained I cannot afford to. They had Mr. Deitel of the New Jersey Coop Company promise that they will give me three men and after a week they will take one man off but I told Mr. Deitel I cannot take their word for it because they failed me more than once. That was the only meeting I had with them which was in Sam Werner's office. I didn't leave that meeting with the understanding that putting on three men was going to be satisfactory to me, but I wanted to take it up with my partner and I would let them know that night. I didn't tell them I wanted union schochtim but that I could not afford to pay the union wage. Charley Herbert said I got to have a schochet there at $65 a week to kill fifty coops and I said I will see and just left it. I never told [fol. 1133] them it was all right with me but that I would take it up with my partner.

By Mr. Rice:

The Witness: I should say my truck was worth about $600 before it was damaged. It was a good truck in perfect condition. I have got to buy a new motor to put in there. The motor is all broken to pieces. The truck is only good to junk it. I would be willing to sell it for $25.

[fol. 1134] MORRIS JAUVITIS, called as a witness. being first duly sworn, testified as follows:

By Mr. Rice:

The Witness: I am in partnership with Mr. Steinberg. I have attempted to purchase poultry in Philadelphia about four weeks ago, from Risser & Rabinowitz. I bought the poultry. They loaned me the truck of the Levit Hauling Company. When I sit with the driver we pulled out about half a block and the boss, Mr. Leavit, told the driver to stop. I asked what's the matter. He told me I cannot deliver your stuff, I got a phone from the union in New York and I cannot deliver it, I better be dumped in the river than deliver your stuff, because Steinberg is on the blacklist. I was present in my place of business last Friday and saw Charley Herbert there. I did not see Harry Shomer or Max Kestler, only Charley Herbert. I was in the market. Charles Herbert yelled you got stuff I fix you and right away he run away. I have not seen Mr. Kestler at my place of busienss at any time within the past two weeks. I am in the market at all times. I saw Harry Shomer last Friday when they bring the coops in from New Jersey. He only stood by the coops with Dave Kaufman and Charley Herbert and another Herbert but I don't know the name, a small boy.

[fol. 1135] JAMES E. AMOS, called as a witness, being duly sworn, testified as follows:

By Mr. Rice:

The Witness: I am a Special Agent, United States Department of Justice. I was assigned to investigate matters of poultry, once on April 9 and another time on April 16. My instructions were to accompany Mr. Steinberg to the West Washington Market and see if he could buy any poultry up there and if not find out what was the reason for him not being able to buy any. I don't remember how many places I was told to go to; as many as he could go to, several. I accompanied Mr. Steinberg on April 16th. I have notes that might refresh my memory.

We went to about five places on April 9th. I cannot name those places offhand; I can by looking at my book to

refresh my memory. We went to the Independent Poultry Company, Chelsea Poultry Company, Manhattan Poultry Company. At the Independent Poultry Company I don't know what the man's name was; he was a salesman there, he was not one of the officials of the company. I recognize Max Solomon here as that salesman. Solomon told Steinberg that they had no poultry, it was all sold out. There was lots of poultry there. I couldn't say whether it was sold or not. I left my office about 10.45 and I got up there about 11.10. I don't know what time of the morning most of the poultry is sold out. They had any number of crates there, I didn't count. I imagine they had about 30 or 40, maybe more, maybe less. The only reason he gave for not selling to Steinberg was that his poultry was all sold on order; that he had no poultry left. Steinberg did say he would pay cash. We next went to the Colonial Poultry Company where Steinberg talked to a salesman at that place also. I couldn't recognize him. He said they couldn't sell him any poultry because they had none, that it was all [fol. 1136] sold. No other reason was given. The place was full of chickens that I could see.

The next place we went to was Manhattan Poultry Company. Steinberg spoke to Mr. Price there (indicating). Mr. Price said the same thing, that he had no poultry, that his poultry was all sold, and there were lots of chickens there. Of course I couldn't tell, naturally, whether they were sold or not. Charles Werner told Mr. Steinberg that he wouldn't sell him any poultry, wouldn't sell him any poultry because he owed him money, had not paid his bills and he wouldn't sell him any. Steinberg denied it. He said he didn't owe him any and Mr. Werner said he could show him on his books that he did. He went to several other places. I think one of them was Julius Kastein and he asked him if he ever owed him any money and had not paid him and he told him Steinberg had owed him money but had not paid him and he asked several other people if he owed money and had not paid and they said he had always paid his bills and that he owed them nothing.

Then we went to Thomas N. Norris Poultry Company and Mr. Steinberg spoke to a man that he called Dr. Norris who told him the same thing, that he didn't have any poultry, that it was all sold. I saw poultry there. Then we went to Julius Koenig. Steinberg talked to Mr. Koenig,

Sr., who said the same thing, all poultry sold. Not being a poultry man, I couldn't tell whether it was a considerable amount or not. At the Saul Frankel Poultry Company he spoke to Bert Frankel and at the Julius Kastein Poultry Company he spoke to Julius Kastein and Charles Collins Poultry Company he spoke to John O'Meara—I don't know how he spells his name—and that's all we went to. All of these men gave the same reason.

I went out with Mr. Steinberg on the 16th of April and [fol. 1137] we went to the same places. The same condition existed; they all said they had none. There was one young man—I don't remember what place it was—upstairs, he told Mr. Steinberg if he would come back the next morning he would give him some chickens. I don't remember what place that was or the young man. There was plenty of poultry downstairs but he said it was all sold on order. I have told about all the visits I made at the West Washington Market.

[fol. 1138] Fred Samato, called as a witness, being duly sworn, testified as follows:

By Mr. Rice:

The Witness: On Wednesday of this week I went down to a vacant lot to get some sand with Steinberg. When I was getting sand to put in the truck a Chevrolet pulled up and the driver got out and made a swing at me and I ran and he picked up a rock and went to throw it at me. I ran all the ways up to a chicken market. I seen Steinberg in there and I told him some guy wanted to hit me, so we went back there. When we went back the truck was gone. The man that got out I don't know him. I don't see him in court here. I don't know Gil Namara. I did not see a man in the vicinity of the market earlier in the morning. That guy who threw a rock that is the first time I saw him. I saw this truck later in the day, the motor was all wrecked. The man that threw a rock at me had a small round face, blue suit, he was short and no tie and was about five foot four or something like that and about 20 or 21 years old.

By Mr. Kaufman:

The Witness: I did not take the license number of this Chevrolet. I ran. I did not see a cop between the lot and Steinberg's place. When I got back to the place of Steinberg I did not see the Chevrolet car around. I saw some men get out of the Chevrolet car when I was getting the sand. I never saw that Chevrolet car before or since. I never saw it around Steinberg's place. When we got it back, the radiators of the Dodge car were all busted, bunged in with an axe. I mean the steel in the radiator was cut with an axe all the way through, because there was big dents in it, and the pipes was broken inside, and the outside is like a big hole in it. Inside of the motor the coil was knocked off and the engine block was all cracked, all broke, and the [fol. 1139] generator starter was busted. I went with Steinberg to pick up this car. I don't know exactly the street; we went over a bridge. I don't know where we went to pick it up. Steinberg and Jauvitis and I went to get the truck in an automobile. We were all down there and looked it all over at the same time. Steinberg was not there alone, before I got there.

By Mr. Rice:

The Witness: The color of the Chevrolet car was green.

[fol. 1140] GEORGE O'DOUGHERTY, called as a witness, being first duly sworn, testified as follows:

By Mr. Rice:

I am a Special Agent, Bureau of Investigation, Department of Justice. I was assigned to investigate this case on Monday of this week. I was instructed to proceed to Aaron Steinberg's place of business at 316 Jackson Avenue, Bronx, and to accompany him to the freight yards where he was to unload a car of poultry that had been shipped in from Lincoln, Nebraska. I stayed in Mr. Steinberg's place of business and he had trouble getting men to go over to the freight yard to unload the freight car and on account of that we were delayed in getting away. Long about half

past eleven he called the office of Mr. Wood and had a discussion with him and he turned to me and told me that the agent refused to deliver the car to him so I took the phone and spoke to Mr. Wood.

I asked Mr. Wood what was the idea he refused to deliver the car of poultry. He said well some union delegates had come to see him and he was not going to take a chance. I said do you mean to tell me that you refuse to deliver that car because union delegates have called upon you. He said that's the answer if you want to put it that way, so I then told Mr. Steinberg. I said come on, let's go over and see that fellow. So we went over. Mr. Steinberg preceded me into the office of Mr. Wood at 448 West 14th Street and Mr. Steinberg turned around and said Mr. Wood, this is Mr. O'Dougherty. Mr. Wood said, Oh, you are the man I talked to on the phone this morning. I said, what's the idea. He said well they came up here to see me and they told me that if I deliver this car I would not ship any more merchandise into New York so I at that time endeavored to get Mr. Wood to accompany me to the Post Office Building. This he refused to do. I then called a certain party [fol. 1141] at the Post Office and told them the facts and suggested that Mr. Wood might cooperate with the government on this proposition by delivering that car of merchandise just to see what the union delegates would do but he absolutely refused to deliver the car or accompany me.

Since the hearing Tuesday night I went to Mr. Steinberg's place of business yesterday morning for the purpose of accompanying him to the West Washington Market with a view to having him endeavor to purchase poultry. When I arrived at his place of business about ten o'clock yesterday morning his truck was outside of his place of business. I went out and looked at the truck and made some rough pencil sketches of the damage that had been done to the truck. Here we have the fender standing in front of it, the radiator standing in front of it (indicating pencil sketches to the court). Up here is the gash which one would gather from the way it looks had been chopped with an axe. This whole part right in here is just caved in, just bunged right into pieces and here that point there indicates the sharp edge of the axe. The right rear tire has a gash which would indicate that somebody had chopped at it. Here on

the left side of the motor we have a two-inch square hole just like you would chop right through that desk there of the iron motor. Here we have the wires from the vacuum tank chopped away. The carburetor just smashed in. For extra measure they gashed the horn and down here we have the right side of the motor where the coil has been chopped all out in a mesh and the cooler was just banged to one side, all completely damaged.

I went to a place, 149th Street and the East River yesterday at 12.15 and there talked to a man named Tarders, at least he talked. I didn't do any talking at all. I was just an observer. Mr. Steinberg endeavored to buy some poul- [fol. 1142] try and he said I just have one car to do me tomorrow morning, Saturday and Monday. He said you might try down to the other place. So this morning I went out with Mr. Steinberg to about five places. He was not able to purchase poultry at any of those places. The reason given was all sold out, in every case. We went to Independent Poultry Company. There was a salesman there whose name I did not secure; Manhattan Poultry Company, Mr. Price. James N. Norris—salesman there; Sam Werner—Charles Werner; Dexter Poultry Company, Charles Sandwich; Julius Koenig—Charles Fisk and Saul Frankel—Bert Frankel.

The next day I went up to make an observation of Mr. Wood's office with a view to ascertaining whom we could subpœna down here before the court. A note was on Mr. Wood's door "Be back in an hour" so I stepped down to the front of the place and became acquainted with Agnew, who is here in court, and entered into conversation with him, asked him if he had seen four or five men go up into Mr. Wood's office the previous morning. He said yes. I said just what did happen. He said he was sitting on the side of a truck at the curb and he noticed four men go up the steps and a short time thereafter a fifth man came up to him and asked him if he had noticed four men go up the steps leading to Mr. Wood's office. I asked him if he could identify any of the men. He said he did not believe so.

By Mr. Kaufman:

The Witness: On Monday we were down to the Melrose Yards around one o'clock. Mr. Betts was out to lunch. He is the agent of the Melrose Yards. I would say we got to Mr. Wood's office about two o'clock. We left Steinberg's place of business on Jackson Avenue between twelve and twelve-thirty. Up to twelve or twelve-thirty Steinberg was trying to get some men to handle this load of poultry. [fol. 1143] I believe he had someone else handle that check proposition for him. I don't know what time that took place. I saw this car before yesterday morning. I believe I noticed it going in and out of the place while I was standing around there Monday between ten and twelve. On Monday it was in good condition.

[fol. 1144] AARON STEINBERG, recalled.

By Mr. Rice:

The Witness: I know a man named Bill. I saw him Monday hanging out with another bunch about a block from my place, 142nd Street. There were about six fellows with him. I know they are members of the union but I don't know their names. I saw them at the union whenever I went up there. I know them by their faces but I don't know their names. This Willie Namara I happen to know because he worked in the Bronx and I have seen him there. I have seen them many times at the union office but I never saw them paying dues at the union office. This man I am referring to is Willie Mount. The name given to me was Bill Namara. It is either Willie Mount or Willie Namara or something like that. He is about fifty-five, medium built, not very stocky, small round face and weighs about 145. He was wearing that day, I think, a blue suit; I am not sure about it. I heard the description given by Mr. Samata about ten minutes ago. The description given by him answers the description of the man I saw. I did not see this man Mount or Namara or whatever his name was driving or riding in a green Chevrolet at any time during the day. I did not see the man that threw bricks at Samata.

I have had difficulty in the past two weeks with my customers. They all complaint to me the men from other markets are going around and threatening them; if they ever step into my place they will never get any poultry from them. Moe Luckman, 952 East 165th Street came in Monday morning and he killed off about 100 pounds and he was supposed to kill more and somebody called him out, hollered to him. Then he said, Steinberg, I am sorry, I will take what I killed but I am not going to take a chance and he went away. A fellow by the name of Harry Klein-
[fol. 1145] man, he killed last Friday. He owes me $127 and he came back Monday morning to pay the bill and killed some more poultry. The same people who were on the corner called him away. I don't know their names. They are union men. He said, Steinberg, I cannot take a chance, and he didn't pay me the money since then. Morris Abramowitz, 910 Jennings Street. He told me I would gladly come and buy poultry from you but I wouldn't take a chance. He said if you would see the guy that came into my market and heard what he told me you wouldn't be any better, and a number of others. I can't think of any other names now.

[fol. 1146] MAX SOLOMON, called as a witness, being duly sworn, testified as follows:

By Mr. Rice:

The Witness: I am a poultry salesman for Independent Poultry Company. Steinberg did not attempt to purchase poultry from me yesterday, or today. I did see this gentleman Mr. O'Dougherty at my place of business today.

By the Court:

The Witness: Mr. Steinberg did not ask to buy poultry from me recently, within the last ten days. I don't know that he was in in April. I have not seen the man for more than two months but this gentleman says he saw me between ten and eleven in the morning. Between ten and eleven in the morning I am always at the unloading depot. I never saw this man before I came to Mr. Rice's office. The time when Steinberg came to buy poultry was quite a while ago, I would say six months. I don't recall his hav-

ing been to my place of business to buy poultry within six months. We have sold him poultry. That was about six months ago. At that time the old gentleman was the buyer for him and we sold him poultry.

By Mr. Rice:

The Witness: Three employees at the Independent Poultry Company are salesmen. I have not known of any incident where Mr. Steinberg has failed to pay his bills to the Independent Poultry Company.

[fol. 1147] ALBERT PRICE, called as a witness, being duly sworn, testified as follows:

By Mr. Rice:

The Witness: I am president of Manhattan Commission Company. Steinberg came along today and asked for poultry, but it was all sold. They were all marked. He was accompanied by Mr. O'Dougherty.

By the Court:

The Witness: Steinberg does not owe us any money now. He last owed us money last February. It took quite a while to pay it. When he paid it I don't know but the last payment he made he took off sixty odd dollars and it took quite a while to get that back. The last time we sold him poultry I think it is in February of this year. I think he bought twice or three times. As matter of fact, I never sold him because I am not in the yard. When he called this morning all my poultry was sold because I had only order. It is customary with us that we don't have any cash business, but I am willing to sell him poultry for cash.

By Mr. Rice:

The Witness: He did not offer me cash this morning. He said have you any poultry to sell. I said they are all sold, all marked out. I showed that gentleman.

By the Court:

The Witness: I can't take his order now for next week if he deposits cash now because I got to take care first of my

steady trade. I am handling very little poultry. I am not willing to take cash for delivery of poultry next Thursday, I haven't any poultry every day.

By Mr. Rice:

The Witness: No one at my stand has ever suggested to me not to sell poultry to certain marketmen. That Steinberg was having labor trouble or union trouble—I probably [fol. 1148] heard it on the street but was not interested. I do not know it today because I know he was in the commission business in the last two months and I forgot about it. As matter of fact I never sold him on the market. I sold out all my poultry today. There are no coops there now.

[fol. 1149] WILLIAM H. NORRIS, called as a witness, being duly sworn, testified as follows:

By Mr. Rice:

The Witness: I am president of James N. Norris, Inc., a live poultry commission house. I didn't see Mr. Steinberg today, not until I came down here. Steinberg might have been at my place and attempted to purchase poultry without my knowing it. He has never failed to pay any of his debts to me.

By the Court:

The Witness: I first started to do business with Mr. Steinberg in January. I sold him for two months. Then the other gentleman, Jauvitis, came down and I used to sell him a few coops. He said they stopped selling wholesale and were going to do a little retail business. I think the last sale I made was March 6th. I am willing to sell him poultry now if I have it, and to take his orders for it as long as the guarantee still holds good.

By Mr. Rice:

The Witness: Steinberg first came into my office, one day in January, and wanted to know if I would sell him some poultry. The account was guaranteed. I made a few inquiries and I sold him poultry. Our business is very irregular. We cannot tell what poultry we will have until the

day before. We do not aim to carry anything. I could not take an order now for next Thursday. I don't know that I will have poultry next Thursday.

By the Court:

The Witness: Today is my market day. The orders for poultry that I delivered today I took this morning—some of them last night. I am willing to take an order that Steinberg may place with me next Wednesday for any poultry I have and give it equal treatment with other orders if I have [fol. 1150] the poultry.

By Mr. Rice:

The Witness: Of all the poultry that I sold this morning about a car and a half was ordered before yesterday, a large percentage. Today we had two cars but we have a short situation today. I do not think there is a coop of fowl in the market. I am willing to take his orders and treat him fairly with the other orders as long as the account is good.

[fol. 1151] CHARLES F. WERNER, called as a witness, being first duly sworn, testified as follows:

By Mr. Rice:

The Witness: I am treasurer of the Live poultry commission house, Samuel Werner, Inc. Steinberg did not attempt to purchase poultry from me today. He was at my market some time in April with Mr. Amos.

I refused to sell him poultry. My experience with Mr. Steinberg dates back to the latter part of last year. Understand, we do not sell Mr. Steinberg poultry, we sell the Bronx Poultry Corporation. That corporation was preceded by a corporation known as the Monroe Poultry Corporation. The Monroe Poultry Corporation is a corporation that we could not get any satisfactory statements from so we did manage through a credit bureau that we maintained in the market to get a statement guaranteeing for the Monroe Poultry Corporation from a Mr. Steinberg who is, I believe, a brother to this Steinberg and a personal statement of that Steinberg which satisfied us that he was good on his guarantee. On the basis of that I sold the old

Monroe Poultry Company several thousand dollars worth of poultry and then the Monroe Poultry Company went out of business and I had to wait about six or eight months before I was able to get my money for the poultry sold to the Monroe but I finally got the money. We got it piecemeal, a few hundred dollars at a time. Then they formed the East Bronx Association and Mr. Steinberg again gave my creditman this same statement which was also satisfactory and I sold him three or four bills in that name. Then I sold him for a couple of months two or three hundred dollars worth. Previous to that Steinberg would take off two or three or four or five dollars claiming it was dead poultry and each time he paid a bill he promised to pay this accumulated balance, which I took his word for but I [fol. 1152] didn't get any money. Then when I sold him this $500 worth of poultry, after I had waited about eight days longer than the due date for that poultry I called up and asked him why I didn't get my money. He said to hell with you you can wait for your money. I got plenty of time to pay you. So we called on his brother on the basis of his guarantee and we finally got him within twenty days after the bill was sold to pay that $500. Then I refused to sell him under any circumstances and I still refuse to sell him for the way he was falling back in his payments. When Matofsky was the buyer for the East Bronx we could get along with him all right but I don't care to do business with Steinberg under any circumstances. Steinberg has bought poultry from my salesman and waited practically until the day was over and then said I won't take it. We don't take receipts on the order, and he just backs out. I prefer not to do business with that type of individual. The East Bronx is not bad as long as his brother guarantees because his brother is apparently a responsible merchant. My complaint is their method of paying bills. I don't care to sell goods on that small margin of profit, 20 to 25 days. It don't pay me for what I get out of it. I have preferred not to do business with Steinberg since this time when he took 20 days or more to pay that five or six hundred dollar bill, two or three months ago. Steinberg offered to pay cash when he visited me in April, but I wouldn't sell him for cash because cash in our business doesn't mean anything. We won't really care to sell a load of poultry. We want to sell a customer's daily sup-

ply. I was not aware that Steinberg was having trouble until I came here today. No one has suggested to me not to sell him.

[fol. 1153] CHARLES SENOWITZ, called as a witness, being duly sworn, testified as follows:

By Mr. Rice:

The Witness: My company is Dexter Poultry Company, at 13th Avenue. There is another Dexter Poultry Company up in the Bronx. I am a member of that concern. Steinberg attempted to purchase poultry from me this morning. I did not refuse to sell him. I said you can have anything I got here. I said I haven't any fowl, I can give you broilers. He went right out; I didn't see any more of him.

By the Court:

The Witness: We didn't have any fowl. We are mostly in the jobbing business. It was not a matter of credit. I suppose if I asked for cash he would give me cash. I am willing to sell him poultry if I have it.

[fol. 1154] CHARLES L. FISK, called as a witness, being duly sworn, testified as follows:

By Mr. Rice:

The Witness: I am a salesman for Jewell Koenig. Steinberg did not attempt to purchase poultry from me this morning. He has not attempted to purchase poultry from me in the past two months that I know of. Once I think he came in there on a Saturday morning. I did not sell him because he wanted to buy them cheaper than the market. He was all alone. There is no other salesman at the Jewell Koenig stand. I am on the yard most of the time when there is another salesman there, Mr. Koenig. This morning I was on the stand—in the market. We had no fowl. We only had broilers and very few of those. Steinberg was not at my stand this morning while I was

there. I am in and out and upstairs and in the restaurant but I didn't see him today.

By the Court:

The Witness: I am willing to sell him poultry right along if he pays his bills. Poultry shipments were short today, very short, very irregular. He hasn't bought anything from us for months. I am willing to take his orders and treat them the same as any one else's orders, providing there is the money.

[fol. 1155] IRVING N. WEIGERT, called as a witness, being duly sworn, testified as follows:

By Mr. Rice:

The Witness: I am a salesman for Charles Werner, Inc. Steinberg came to our commission house this morning. I refused to sell. It was all sold out. I told him I had none to sell. We had no fowl today, only broilers. We had nothing for sale. All the broilers we had were sold. I was sold out a little after ten o'clock, about ten o'clock. If Steinberg had been there at nine-thirty he could have purchased poultry from me. I always have sold him. The last time I sold him I sold him from the railroad. It is hard for me to say. He hasn't been near me since. This morning he walked in on me and I said nothing to sell. I never refused him before.

[fol. 1156] JULIUS KASTEIN, called as a witness, being duly sworn, testified as follows:

By Mr. Rice:

The Witness: I am a live poultry commission merchant. My company is Julius Kastein, Inc. Steinberg did not attempt to purchase poultry from me this morning. I didn't see him. I did not see Mr. O'Dougherty this morning. I believe Mr. Steinberg was in my office with this other gentleman there (indicating Mr. Amos), and I explained the account was very unsatisfactory to me, they have taken off

more than I ever made from him. When Mr. Matofsky was there he took off one bill $124. I didn't want to sue him and finally wrote it off the books. I sold him some chickens, six coop- of poultry. We worked in the dark. We got inspection. He said he was short. And we must not kill on the New York Central at ten o'clock at night, and that man disappeared after I monkeyed around all night to give him poultry. Time and again he has bought stuff of me on the stand—hold it for me tomorrow morning and never showed up. He owed me a thousand the last time they closed up. I said I understand they closed up. I said give me this money. He said you wait, I got time. I persuaded him to give me a check for $500. The other $500 it took me about six months to get. I got the last $40 this week. Every time I called him up he said "You would get it". This other buyer, Mr. Matofsky, every time I asked him he would say, give me more poultry and I will give you the check. It was a very unsatisfactory account. When was the last time Steinberg bought poultry of me I can't tell you. I told him he owed me money. He asked me if I would sell him for cash. I said I might if the other account was paid up. I said come around the next day. If I got any poultry I might give it to you, I don't know.

[fol. 1157] GEORGE O'DOUGHERTY, recalled.

Cross-examination continued.

By Mr. Kaufman:

The Witness: Last Wednesday was the day that Mr. Steinberg claimed the car was damaged and Thursday was the day I went up there to look at it. That car is a small Dodge truck with an open back and the driver's seat is under a sort of hood. Behind the driver's seat and that hood, was an open truck with sides about twelve inches high. I didn't notice any junk in the truck. I didn't notice any pillows or broken wood or furniture in that truck. I noticed the truck in connection with the employment of some colored men to go over to the freight yard and help unload the freight car. I noticed them get back in the truck and go away after we were notified that the carload of

chickens would not be turned over to Mr. Steinberg. That is the same truck these colored men got in and were taken back to the place where they were picked up by Richie Brown and brought over to Mr. Steinberg's place prior to going to the freight yard. That was on a Monday, the day of the refusal of Mr. Roscoe Wood to turn over the carload of chickens to Steinberg. I saw the car driven—running, as it drove away with these colored men in it on Monday of that week. I saw at Steinberg's place a small Dodge truck, a large truck that had come from Jersey and a Dodge sedan automobile. I just looked at the damage done to the car. I was looking for the damage done to the car just up in front. Whether the right and left front fenders are almost rusted through, and part of them hanging off, I couldn't say. I looked merely at the damage done. Referring to this photograph shown me, the driver's seat is right in back of that glass. I did not look in there to see whether there was a cushion on there for the driver to sit on. I did not look to see whether the left front mudguard was connected with the running board. I just merely [fol. 1158] looked at the damage that was done to the truck. In this open space directly behind this seat, I didn't see a lot of old junk in that car with a thick accumulation of dust. I did not look for that purpose. No reason for me to look for that purpose. I know if the rear of that truck was filled with junk and merchandise as you say it was, four or five colored men could not climb in and out of that truck. I saw no refuse in the back. I saw men in the truck.

By Mr. Rice:

Q. Mr. Kaufman has referred to these photographs; would you look at this one and show what damage has been done?

The Court: Just offer them in evidence.

Mr. Kaufman: Offer them in evidence; I have no objection.

The Witness: These photographs represent the automobile which I saw.

By Mr. Kaufman:

The Witness: My attention was not drawn to a cut tire on that truck. I went around and looked at the truck my-

self. I testified about one of the tires having been cut. Referring to my notes that I made at the time, I looked at the tire, rear right tire gashed, just the outer casing, one gash, and when I testified I said it appeared like it might have been gashed with an axe. I don't know that it was. But the tire was full of air at that time. It appeared like a new cut. There was not dirt or sand in the cut.

[fol. 1159] MAX LEVIT, called and sworn as a witness, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am manager of a poultry business. I haul poultry to New York City as often as I can. I have hauled about four truckloads of poultry to New York City in the past two weeks. Jauvitis has attempted to haul poultry in my trucks, within the past month and a half or two months. I received a call from Risser & Rabinowitz, wanting a truck to deliver some poultry to New York. I sent a truck down and they loaded a truckload of poultry. After they got through loading it the driver called me; it was a C. O. D. When I heard that I went down and spoke to the people. The man had not even paid a deposit down on the poultry. I was in no shape to haul poultry to New York on a C. O. D. I refused to make delivery because I didn't want to haul poultry on that basis. I didn't want any bother with C. O. D. I don't ever take C. O. D.'s. I lost some money on C. O. D.'s and I didn't want to take any chance. I did not talk to a member of the union from New York before I stopped that shipment of poultry. Before I arranged to give him a truck to ship the poultry to New York, I didn't inquire about the shipment. I don't ordinarily do that. In most cases people come and pay for their goods. When they asked me for the truck they did not say anything about it and I didn't think about it.

Cross-examination.

By Mr. Kaufman:

The Witness: The party we deliver the poultry to pays for the truck. In this case it would have been Steinberg

or Jauvitis. They would have to pay me for the cost of the poultry and my storage charges. If I were not paid either the cost of my charges or the poultry, I would have [fol. 1160] to carry it back or make good for the load of poultry.

By the Court:

The Witness: Otherwise I would be willing to haul poultry for him now, irrespective of the union.

By Mr. Rice:

The Witness: After the criminal trial about six months ago I did tell you I didn't want any trouble with New York men. I did tell you that at the time. I delivered poultry for these people, but they had left some money on that shipment before it left Philadelphia, with the people they bought the poultry from. I know because I know what had to come back. The last time prior to this time you are referring to, I had made up my mind that was the end of C. O. D.'s. Considerable expense is involved in loading and unloading a truckload of poultry. We lost about four hours, representing about a quarter of the work, and we got paid nothing for it.

[fol. 1161] JULIUS STEINBERG, called and sworn as a witness, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a brother of Aaron Steinberg and my business is manufacturing silk novelties. I am interested in the poultry business only in a financial way in the East Bronx Poultry and Palace Commission Company. My brother attempted to purchase poultry from us about two weeks ago and I told him he could not afford to have trouble with the union and that is why we could not give him any poultry. That was our only reason for refusing to sell to him. I am not active in the business. Mr. Bloom said, "You are liable to have trouble if you sell poultry to your brother," and that is why he is not willing to sell it.

Cross-examination.

By Mr. Kaufman:

The Witness: I am not active in the business at all and don't know anything about it. I do not know Arthur Herbert. Of the East Bronx Poultry Company I own about fifty per cent of the stock. The rest of the stock in the company is owned by my brother Aaron, and a man by the name of Jauvitis. My brother Aaron, in the beginning, when we incorporated, invested $2,000. Now I am in there for about $15,000. He has no money. Mr. Jauvitis didn't put up any money. He has about twelve shares out of 100. I am financing the East Bronx Poultry business and also the Palace, in which my partners are Jake Bloom and Julius Bloom, two brothers. I go there once a week, just to sign the checks. I go up to the East Bronx Poultry Company once in a while.

[fol. 1162] Julius Bloom, called and sworn as a witness, testified as follows:

Direct examination.

By Mr. Rice:

The Witness: I am a partner in the Palace Commission Company. Aaron Steinberg did not attempt to purchase poultry from us about two weeks ago. The last time he attempted to purchase was two months ago. At that time I didn't refuse to sell him, exactly. On account of having trouble there is in the place I have told him that I would not care to sell to him and wouldn't care to have any trouble in our business. I was afraid I might have trouble myself if I sold to him. I had no basis for that fear. I cannot state any basis exactly. No one suggested to me that I might get into trouble if I sold him.

[fol. 1163] William H. Norris, recalled.

By Mr. Rice:

The Witness: The last time I was here, I said that I would sell poultry to Aaron Steinberg if he paid cash.

He called up Monday since that time and wanted to buy some fowl. I told him I only had Leghorn fowl. He said, "Send me a couple of Leghorn coops." I called up the yard to send him a couple of Leghorn coops, but they brought it to market. I didn't suggest that he load his own; he asked me if he could load his own.

I told him that the men refused to load, union men wouldn't load with outside men. They load only with union help. I did not tell Steinberg that I was afraid to sell him poultry because of the union. Steinberg said that if he could load it himself he could no doubt load, but the union men wouldn't load with outside help. I talked to Max Kessler about this on Wednesday in my place. I approached him and I asked him if Steinberg wanted to load the poultry himself could he do it, and he said yes, the bosses could load but they could not load with outside help. He did not say that if Steinberg had any other men with him besides himself, that he might get into trouble. He could have his partner. He said they wouldn't load outside of union labor. He just said if Steinberg and his partner wanted to load, they could load. He didn't say anything about any other man not a union man accompanying them. I had no basis for inferring that a non-union man could not accompany Steinberg. I have union men, and I need union men. I just inferred if I loaded outside, why, my men would not work. I had no right to say so because I didn't try. I didn't tell him not to bring any strange men with him. I told him that if he and his partner wanted to come down they could load. Steinberg did say he could not load that poultry alone and I am sure that I [fol. 1164] said his partner could come along, too.

By Mr. Kaufman:

The Witness: Steinberg did not say that he was coming, and for me to set aside two coops for him. He called on me to send him two coops. I had two coops loaded which were sent to the market and the practice was for Steinberg to come and pick them up at the market. He didn't come down, but he told me he would be down the next day. The order was placed on Monday and he came on Wednesday. He told me he was not going to pick them up, he just left them on my hands and went away.

By Mr. Rice:

The Witness: Steinberg did not attempt to take delivery on Wednesday. He came up in the office and we stood there talking a while. He wanted some colored fowl and some leghorns and we talked over general conditions and then he went away. When he went away he said he would let me hear from him later and then he called up the same day. He indicated he wanted poultry but gave no reason for not taking delivery. My men would not load him. I had four union men there. One of them said, "We cannot load him". That's all.

[fol. 1165] AARON STEINBERG, recalled.

By Mr. Rice:

The Witness: I do not have any union men in my shop. I have tried during the course of the past two months to take union men ten times. I have requested every delegate connected with the union, Harry Shomer, Dave Kaufman, Tootsie Herbert and Charles Herbert. I negotiated with Charley Herbert as well as Arthur Herbert as to members of the shochtim union at times. I even endeavored to send Mr. Siegel, my attorney, if he can possibly persuade the union to give me union help and they refused to negotiate with me. They told me I must take three men and two shochtim.

Originally they told me I had to take four men, but now two men. I want one shoch*tim* and one helper. They were unwilling to give me less than three men and two shochtim. A shochet's salary is $65 a week, and a man's salary is $50 a week, and a dollar overtime for each hour, and Friday when they start before seven you got to pay them two dollars an hour. The usual pay of the men is about $70 a week. That would be $210 a week for the men. For the shochtim it would be $130 a week. Now I don't employ anybody, only one boy is in the place but I don't do any business. My business is ruined. Before they interfered with my business, I did not have any men. I worked myself and Mr. Jauvitz is the shochet. We did a small business. We used to get it from Philadelphia and on Sunday from different marketmen. Two months ago Jauvitz and

I handled all the business. The union delegates insisted I take three men and two shochets. I was paying Richie Brown and Samato four dollars a day.

I have heard Mr. Norris testify as to my attempt to purchase poultry during the past week. Monday at ten o'clock I called up Mr. Norris and said, "Mr. Norris, you promised Judge Knox to sell me poultry; are you going to [fol. 1166] give me some?" He said yes. I said, "I want four coops of colored fowl and a coop or two of leghorn fowl." He said he didn't think he had any colored fowl and I said, "All right, send me two coops of Leghorn fowl." At two or three o'clock Mr. Norris called me up and said "I charged you two coops of Leghorn fowl but they wouldn't deliver it." I said, "You keep those Leghorn fowl on the stand. You have some poultry on Tuesday, get me four or five coops of colored fowl and I will come up myself and take it." He said, "All right, call me up and I will let you know if you are to come over." I spoke to Bill Norris, Dr. Norris's son. He said, "Yes, Steinberg, we have the colored fowl, if you will come up we will give it to you." I came up; I saw the poultry on the stand; there was quite a bit of it. I went up and saw Mr. Norris was in the office. He said he didn't approve of the practice of the union, they were forcing shochtim on people. He said, "Steinberg, I have four cars, tomorrow is a big day, the market doesn't look good, today the market is 28 cents and if I get in a jam with these people I cannot afford it." He said, "Call me up tomorrow at eleven o'clock. I am going to give this thing a test, I will surely give you poultry." Of course I was satisfied. I had to be satisfied, and went back. At eleven o'clock I called and got the bookkeeper. Norris was not there. Later he called me. He said, "I got the poultry, but here is what I got from the union, you must come yourself and load. If you bring anybody else, I will have a strike."

I said, "It is physically impossible for me to lift a crate, that is big and weighs over three hundred pounds. How can I lift it on the truck?" He said, "I am sorry." I don't have Mr. Jauvitz to help me. It is impossible. The union use four men. A coop is very bulky and weighs three hundred pounds. Jauvitz cannot do it. He isn't physically built for it, and I was absolutely without any [fol. 1167] poultry at all.

[fol. 1168] HERMAN MOTT, called and sworn as a witness, testified as follows:

Direct examination.

By Mr. Kaufman:

The Witness: I am in the poultry business. I was in partnership with Steinberg about a year ago and severed my relationship with him about November or December of 1929. During the last month or two, I have talked with Mr. Steinberg about getting together again. Three weeks ago on a Monday I think it was, Aaron Steinberg told me whether we can get together in business. He told me he had a car of poultry on the track and he said he didn't want to take it out. That was Friday. I asked him why and he said he was not ready, and he kept it Saturday, Sunday and Monday, and I told him by keeping it four days, the shipper might take the car away from him, and he said, well, he couldn't help himself because he was not ready to unload. I was there Monday and he spoke to me and said he wanted to go ahead and take out the car without union labor because he could save $300 a car. I spoke to him and told him that was all right on his side but I couldn't see where he could start in with three different labor union- to take out a car, there is Local 167, there is the Unloaders, there is the Pullers. I said, "You will be in trouble with every one of them." I told him if we could go ahead and straighten out with the union, we could take the stuff out. He said it would not be for the reason that if he settled with this union he would have trouble with the others and it would cost him $300 a car more to take out. Then we had a talk two or three days later. He said he expects to beat the unions in court. He said he expects to get an injunction so he can be the only one to go ahead and do business. About this proceeding before Judge Knox he told me he is sure he is going to beat them and get an injunction to go ahead and do business and handle eight or ten cars up there where he can be the only one in the field in that game. [fol. 1169] A week ago last Thursday I seen him and was in the office and there was a man who said he was from the Government, Mr. O'Dougherty. We went down to Julius Steinberg in his office on Broadway. He is not active in the business. When I went down with Mr. Steinberg and

O'Dougherty, I spoke to Julius Steinberg and then spoke to Aaron Steinberg, and I said to Aaron, "Why don't you go down?" He said he don't want to go down, because, he said, if he would go down maybe they would give him poultry, and if he went down and got poultry, what would happen, he said all his plans would be upset and it would not pay him. O'Dougherty was pressing Steinberg to go out. O'Dougherty said he was sent to go down there to find out himself if he can get poultry, and he was trying to get Mr. Steinberg to start out on that job. He didn't get started that day at all. Steinberg said in Jewish to me so O'Dougherty could not understand it, "I could not act for the simple reason if they give me poultry that will upset the whole plan." The last time I saw Steinberg was Tuesday of this week. He told me that some fellow by the name of Willie Mount broke his car: I told him it could not be Willie Mount because that fellow worked for me for years and he worked for some other people and I said he will be the last man for doing that. I said, "Are you sure that is him?" he said he don't know his name but he heard Willie Mount. I said, "Remember, Willie Mount wouldn't touch a fly because that fellow is actually different from the rest of the men." He said his car was damaged with an axe. He did not say he had done anything to it. He said it might as well be destroyel, it isn't worth anything, it is running four years.

I was in partnership with Steinberg twice, the first time about fifteen months. During the time that I was in partnership with Steinberg and he was employing union men, he did not actually pay the union scale of wages to the shochet. [fol. 1170] I know the last time when he started and got in trouble with labor, I told him right away you can not be in business with union labor, you paid them $60 apiece instead of $65. They had to lie themselves. The shochets he paid $50. The other men that were working there, union men, some worked flat money, fifty dollars or so. Some of them got overtime. There were always quarrels about paying overtime just before I left the business. When they started in trouble with the union, I left. That must have been in August because I left in September. For several weeks he took three or four dollars a week off the men's wages. Steinberg said many times he would break the union if it cost him a million dollars or some other such extravagant statement.

Cross-examination.

By Mr. Rice:

The Witness: Steinberg said he wanted to get an injunction so he could be the only one that could handle poultry up in the Bronx with his own coops and his own labor. He told me that last week and two weeks ago. On the first occasion that I talked to him, there was no one else present. On the occasion that Mr. O'Dougherty was present, he didn't speak anything then. We had nothing to talk about. We spoke about it in Mr. Steinberg's office on Broadway. Steinberg told me that Mount destroyed his car. He didn't say Namara destroyed it.

I was associated with Aaron Steinberg in business in 1929 until September. I had no arrangement with Aaron and Julius Steinberg while I was working there as to compensation for my services. I got paid fifty dollars a week. I was supposed to go in partnership with him on a one-third basis when I came to work there and he was supposed to pay Mr. Wolfowitz, or whatever his name is. There was no stock to be paid for. I didn't get any stock and I didn't pay for it. I don't know whether there was a corporation [fol. 1171] operating there. I was a partner the first time and I left him in November or December, 1929. I did not leave because I failed to put in money into the business. I am not in business now. I was last in business about two months ago. I had three telephone calls from Steinberg at my daughter's home. Her telephone number there is 2508 Susquehanna. It isn't true that on several ocacsions during the past two months I have been at Steinberg's market and have begged him to go into another partnership with me. It isn't true that I have requested employment from Steinberg or that Steinberg gave me some encouragement that he might employ me under some arrangement. I was last employed by Independent Poultry Company. We closed up. After the close I did not go to see Steinberg. While I was working at the Independent Poultry Company after working hours I did not go to Steinberg's market on many occasions and requested work from him. He negotiated with me for a partnership or some other business association when he called me. It was about three weeks ago on a Friday or Monday.

I left Steinberg's market in December, 1929, because he was supposed to pay out Wolfowitz and take me in as a

partner there. I didn't want to go into the business as long as Mr. Wolfowitz was there. I was supposed to get and pay for one-third of the shares. I didn't pay for them because I didn't get them.

I spoke to him Monday, May 12th. I don't know whether the car of poultry was sold or bought on that day; I spoke to him in the office. He asked me to come in as a partner. I told him I would have to talk to his brother because he is a partner in the business himself. The brother said he is going to give me shares and we should go into business, we are to handle a lot of cars up there and will make money and I said I cannot see I can go into it if he wants to quarrel [fol. 1172] with labor; if I can straighten up the labor question I will go in with him. I have been out of work for two months. I am taken care of by my son-in-law. On that occasion when I spoke to Aaron Steinberg I did not tell him that Charley Herbert had sold that carload of poultry to Louis Spatz. Steinberg told me that Bloom, his partner, told it to him. He didn't want to tell it to me first off. He said, "Mr. Bloom told it to me". I said you shouldn't make them kind of statements if Bloom told it to you. I talked to Aaron Steinberg on Friday, May 9th, about twelve noon or one o'clock P. M. I don't know whether the car of poultry arrived Friday morning or Friday noon. I talked to him on Monday also. I haven't visited Steinberg's market since that Friday night. In the past two months I don't believe I was there twice. I negotiated to become associated with him in business about twice. Steinberg told me that he would pay a million dollars to break the union in his place Thursday, a week ago, when he asked me to go in partnership with him. I told him I wouldn't go in unless he straightens up the labor question, and while we were talking I said the best way out of it is if we can get Mr. Hillman's plant up in the Bronx then he could straighten up with the union and save whatever he wants to save. Then he said all right, you go down and speak to Mr. Hillman, and I did and I made an appointment for Mr. Steinberg and we went over last Tuesday, on 72nd Street, in the Hotel Bancroft, and we spoke to Hillman and Hillman wanted to have forty per cent of the business. Mr. Steinberg listened to it and then went out and he said it didn't pay him to give him forty per cent of the business where he could do the same thing in his own

plant, besides paying him $700 a month rent, and I went down to his place and he said what's the use of me bothering with the union when I have my own place and my own [fol. 1173] labor and that is where I want my business and my market. I did not tell him where he could get empty crates and I have never heard of the National Box & Lumber Company. I did not tell Steinberg that he could buy empty crates at $1.65 at the National Box & Lumber Company. When we were supposed to go in business, about a week before, I spoke to him and told him that both cars he has got has to be thrown out for junk because they are no good. That is about the only thing we spoke. We have to get new trucks, but after it was injured he said to me it was not worth anything anyhow, I might as well throw it out.

By Mr. Kaufman:

The Witness: Steinberg did not say who broke that truck. He told me they had broken the truck but the next day he said a man by the name of William Mount had broke the truck and I said to him, not that I took anybody's part, this fellow William Mount wouldn't harm a fly. I said William Mount would never harm a truck or anything. That's all I told him.

This day that I was down to Steinberg's brother's place he showed me his employees in the place. He said they were not union people; he never employs union people. He was trying to do the same thing in his place as he was doing up there. He said he was paying these people $18—$20. He said he has to have good help before he would pay him $20.

By Mr. Rice:

The Witness: I talked to Mr. Kaufman, the attorney, before I testified here the other day in the hall, but not before that. I did not talk to Arthur Herbert or any of the delegates of the union.

[fol. 1174] Max Wolfowitz, called as a witness, being duly sworn, testified as follows:

By Mr. Kaufman:

The Witness: I remember the time that Arthur Herbert went to jail to serve the sentence that was imposed by Judge

Knox but I don't remember the day. At that time I was in partnership with Mr. Steinberg for about eight months. On that day Steinberg discharged all of the union people and said he was going to break the union. When he discharged his people and said he was going to break the union, I told him he cannot do it with me; if he cannot straighten it out with the union—I am a union man myself and I cannot stand it and I got to get out and I did. At that time he had about $1,200 worth of my notes for my interest in the business. I couldn't agree with Steinberg and that is why I stopped paying and went out. Up to the time that I stopped paying I had paid him $2,300 and in addition to that he had $1,200 of my notes. I did not get back any part of my $2,300. During the eight months that I was in partnership with Steinberg I did not have any difficulty with the people who were working there but he always told me to push the clock on them and not to pay them; he always behind two or three dollars—$3.50. If the men started to ask him why I didn't pay them the two or three or three and a half dollars whatever is coming to them Steinberg said if you don't want to work get out of here. There were disputes with the men during the time I was there almost every week. They were union people and I couldn't protect them because I was not a boss myself. I had a partner with me.

By Mr. Rice:

The Witness: I was president in the corporation which ran this business but I didn't manage the business. I was out before Charley Herbert came out of jail about a week [fol. 1175] or so before. I remember about the time that Arthur Herbert went to jail. At about that time Harry Shomer and Max Keslin came into our place of business. They said it is not nice from you Max to treat the union men the way you are treating them. I said absolutely not and if that would not be settled I will be out of the place. I did not call the police. The police did not kick Harry Shomer and Max Keslin out of the place at my request. The police was around there but I didn't call anybody. I was not there alone; Mr. Steinberg was there and everybody was there. Keslin and Shomer were not attempting to call a strike on us at that time. They didn't tell us we

would not get poultry unless we treated these men fairly. They asked is it fair for you to treat union labor that way. I said absolutely you are right, if union labor are not treated right I will be out of the place and after that I went out of the place. I don't remember whether after that policemen came in the place. Generally the cops are walking around the place but I don't know when, I never called anybody. The policeman did not say or do anything. I didn't see them in the place at all. I seen them walk around the place. Sometimes they used to come in. Any poultry market cops come in. There was a strike called on that place while I was president of the corporation. That isn't the reason why I left Steinberg's market. I left Steinberg's market because of the way he treated union labor. I sympathized with union labor. I couldn't stay there if the union men were out.

By Mr. Kaufman:

The Witness: The ones in this company that I was president of were Aaron Steinberg, Julius Steinberg and myself. The treasurer was Julius Steinberg, who signed the checks. What officer Aaron Steinberg was, I don't remember. I had 33⅓% interest and Mr. Aaron Steinberg and [fol. 1176] Julius Steinberg owned the rest of it. When I was a partner of Steinberg's Javits was working there as shochet and collector at $35 a week. The union scale for shochets was $65 a week and he only got $35 for being both a shochet and collector. We paid the union shochets while I was up there, $50 a week. They were never paid the union scale while I was with Steinberg.

The Court: I understand all the time he went up there they were not paying union wages.

The Witness: Before they started to ask for it I didn't bother with them. When they started to ask for it I couldn't help it.

Mr. Rice: I do not think there is any dispute as to whether Steinberg played fair with the union or not, as to whether he was trying to violate the union regulations and get labor as cheaply as possible.

Mr. Kaufman: Are you admitting that he has not played fair with the union?

Mr. Rice: I am not admitting in those terms, I am admitting that he attempted to get labor as cheaply as possible.

The Court: And that he did not pay union wages, as far as that is concerned, as the union wanted them paid, and what I have in mind is this man left when there was a definite protest made to him; that he was quite willing to go ahead and not be solicitous for his union members until somebody called at the place of business.

Mr. Kaufman: I do not think your Honor has the sequence of events as this witness has attempted to explain them.

The Witness: Up to the time that Arthur Herbert went to jail as Mr. Rice puts it, we were not paying the union wage. The day that Arthur Herbert went to jail, Steinberg discharged all of the union people. It was after Steinberg discharged all of the union people that Harry Shomer and Max Keslin came up to see us. The men were discharged one or two days already when Harry Shomer and Max Keslin came to see us. It was then that Harry Shomer asked us whether we were fair to the men.

[fol. 1177] Louis Deitel, called as a witness, being duly sworn, testified as follows:

By Mr. Kaufman:

The Witness: My business is trucking and furnishing of coops to the commission merchants. I know Aaron Steinberg. I had talks with him during the last three or four months wherein he asked me to act as an arbiter with respect to his difficulties with the union. I visited Steinberg's office several times regarding some coops that he had up there belonging to us.

In the course of conversation the gentleman who was working for him, Javitz I believe it is, the shochet up there, asked me if I could not intercede or try to arbitrate the union trouble, the labor trouble. I said I was perfectly willing to do anything that I could do to settle the matter and Steinberg also chimed in and said he would appreciate it very much if I could do it. I said I would

try to do it. I don't want to be held to any particular date or days that I was up there. I can't remember that. At this particular time they both spoke to me about trying to arbitrate this matter and I told Steinberg that if he would meet me in the market the following day that I would see what I could do. He met me in the market the following day and it seems that some of the labor delegates were around and I had a talk with Steinberg. I told him that nobody was around; that possibly at some other time we could straighten it up, that is I would try and help him straighten it up. He asked me at that time would we furnish him coops and trucks. I said we sure would. I said that is our business. He also asked me would we furnish him coops and trucks if he did not settle with the union. I told him we would furnish him anything but I said, you know, Mr. Steinberg, our men are all union men and even if we did want to give it to you you [fol. 1178] know they would not go to you. I was up to see Mr. Steinberg again regarding the coops and again they both asked me would I try to intercede. I said yes. I said I would make an effort to try to get hold of the labor delegates and have a meeting and I would act as the arbitrator between them. In fact, I asked them what the trouble was. He told me that the union wanted him to take three men and two shochets. He said the amount of business that he does does not warrant paying out so much for labor and that it was not fair. I think I said what do you think is fair. Well, he said, two men and one shochet, so I said, I will try to get hold of these delegates tomorrow and if possible I will see if we can arbitrate this matter and I asked Mr. Steinberg to meet me in the market the following morning, which he did, and I did meet some of the delegates and Steinberg and I and the delegates went up to an office in West Washington Market.

The matter came up regarding how many men Steinberg should have. The union said he should have three men for the first week. After the first week they would withdraw one man providing he did not do any more business than what was allowed by the union rules. If I remember rightly it was fifty or sixty coops that he could do business with two men and one shocket. That is after the first week. I will go back again. When I was up in his place, when

we spoke about that, he said I would like to settle. I said, Mr. Steinberg, suppose they withdraw the one man as they said you. He had told me that the union had told him they would withdraw one man. I said suppose they do that what difference does it make to you to settle a labor question for the sake of $50 which one man would cost you. He said, I wouldn't take their word. I said. I will tell you what I will do, Mr. Steinberg, if I arbitrate this matter for you and if the union delegates tell me they will withdraw one man after the first week and also [fol. 1179] to furnish one shochet. The question of price came up. Naturally I was not interested in that. I believe the men were — $65 a week. It was towards the end of the week. What day it was I just can't say, whether Thursday or Friday, and at the conclusion of the meeting Mr. Steinberg said to one of the delegates, It is practically the end of the week now, if I do start business I will open up on Monday and I will give you a ring. So that was that. They went down and I again assured Mr. Steinberg that everything would be all right. He thanked me, we shook hands and he thanked me very much for my efforts and I left. Steinberg at first argued that he wanted only two men. They told him they would withdraw one man after the first week. In fact as I say I personally guaranteed that they would. For the withdrawing of the third man at the end of the first week the condition was that if he did not do enough business—they argued over the amount of coops that he could sell. He said he wouldn't sell over fifty or sixty coops a week. Mr. Herbert said that the union contract provided for three men and two shochets in the event that more than fifty coops were sold. Mr. Herbert made a concession to Steinberg of two men and one shochet if he sold up to sixty coops a week. He said he wouldn't hold him to a few coops one way or the other. He said he would allow it. Steinberg seemed to be satisfied. He didn't acquiesce. He didn't say that he would give in but he did say that he would consider it, that everything looked all right and that he would call up the headquarters if he wanted the men for Monday. He said if he did start in he would not start in until the following Monday. It was probably Thursday or Friday at the time we had this meeting. I said if they told him in front of me they would withdraw

one man that I would guarantee that to Steinberg. They did say that in front of me to Mr. Steinberg. I felt that [fol. 1180] was a fair arrangement to both sides. The only thing hinged upon the matter of one man when Mr. Steinberg spoke to me. I figured it was fair and would stop the trouble. I said for the sake of $50 why have the trouble.

By Mr. Rice:

The Witness: I am a vice president in the New Jersey Coop Company and the active manager. I am not a member of the International Brotherhood of Chauffeurs, Teamsters, Stablemen and Helpers. Our company makes contracts and I supervise the making of such contracts. We have a labor contract with the union specifying the amount of wages that we shall pay our men. We have no understanding with the union that we are to supply all of the coops for the poultry industry in New York. It is none of their affairs. We supply all of the coops for transporting poultry from West Washington Market and from the Terminal to the various markets all over the city. We have no competitor whatever in New York City. During the last three years nobody has attempted to compete with us that I can remember. We charge $1.00 rental for these coops.

I offered to guarantee that the union would keep its word. Business is done on a man's word. I have taken a man's word for a whole lot of things possibly better than if it was on paper. I know all the delegates of the union. It isn't true that Charley Herbert in my presence told Mr. Steinberg that if he killed more than fifty coops, even fifty-one coops, of poultry a week that he would have to have two shochets. He said we wouldn't hold you to a few coops one way or the other. If it is fifty or sixty coops we would not hold you to a few coops. Steinberg didn't exactly accept the arrangement which I had negotiated for him. He said things look pretty good and it is the end of the week and if we start in business I will open up on [fol. 1181] Monday and I will call you up. I don't know whether he operated for several weeks with three union men and two shochets. I don't know that the union refused to take off the third union man.

Mr. Kaufman: There is no such proof.
Mr. Rice: I can offer such proof if your Honor permits.
Mr. Kaufman: We would like to have you offer it.

By Mr. Kaufman:

The Witness: The time when I sat as arbitrator of this meeting I really couldn't tell you, it may be a month ago, or three weeks, I wouldn't say sure but before these hearings started before Judge Knox.

By Mr. Rice:

The Witness: Mr. Steinberg came to me on the road one day and said to me will you give me a truck. I said sure, I have possibly twenty-five or thirty trucks—and I told my foreman on the road take care of Mr. Steinberg what he wants and he went over to him and asked him what he wanted. I told him to ask Mr. Steinberg what he wanted. Then the foreman came back to me and told me he didn't want the truck at that time. I didn't refuse to supply 100 coops requested by Mr. Steinberg to haul poultry from the Melrose Yard to his market. He asked me would we supply him with coops and I said we would supply him with coops and trucks. I said our men are union men, they belong to a union in New Jersey not affiliated with the New York union. I said you know, Mr. Steinberg, they are union men and if you have scab labor being union men they will not go with you. It was not that I would not furnish him; I explained that to Mr. Steinberg. I told him it was impossible. The driver wouldn't naturally go there.

[fol. 1182] Max Wolfowitz, resumed.

By Mr. Kaufman:

The Witness: Steinberg came to my house last Saturday night. He wanted we should open up a place again and he said we got the union licked and we will do business and we will make money. I said I don't want the business and I don't want the money.

[fol. 1183] Max Keslin, called as a witness, being duly sworn, testified as follows:

By Mr. Kaufman:

The Witness: During the last month or two, I have not been up in the Bronx at any time near Steinberg's market. I have been working in West Washington Market. I am there every day in the week.

By Mr. Rice:

The Witness: I was not at Steinberg's market on Monday, May 12th.

Mr. Kaufman: This being an informal investigation I do not propose calling any other witnesses unless your Honor wants to hear any specific thing.

The Court: Anyone further you want to put on?

Mr. Rice: I should like to offer an affidavit of Mr. Oseas. It is designed merely to show what has been the attitude.

Mr. Kaufman: There is one inaccuracy in this affidavit and I do not think it was intentional. Mr. Oseas says: "At the conclusion of this statement I turned to Mr. Steinberg and told him that Mr. Kaufman having stated his advice, Mr. Steinberg was to go down to West Washington Market with his own truck and prepare to do his own loading. Mr. Kaufman then stated that if Mr. Steinberg intended to do anything of the kind he advised him to secure police protection for his truck otherwise he would not be safe." That is inaccurate to this extent. I said to Mr. Oseas and to Mr. Steinberg that if Mr. Steinberg attempted to take non-union labor down there I would suggest, because we could not control hundreds of members of this union, to have a police escort that is regularly maintained for that purpose so that if anything happens we won't be responsible and the person who starts the trouble will be arrested.

[fol. 1184] ARTHUR HERBERT, called as a witness, being duly sworn, testified as follows:

By Mr. Kaufman:

The Witness: Regarding the breaking of Steinberg's automobile, the only time I heard about it was in this court room. After I heard Steinberg testify I made an investigation to find out whether by chance any of the members

did it. I learned only one thing, that William Mount, the man who Steinberg said did it, was in the hospital today and was in the hospital the day Mr. Steinberg said it was broken. He has been in the hospital as near as I can remember two or three months. David Kaufman is in the hospital today. He was taken to the hospital a week ago Saturday and was operated on for appendicitis. About the car of poultry that Mr. Steinberg referred to, all I can say is I don't know anything about the poultry, only what I heard in this courtroom. You, as counsel, gave me advice, and I instructed my men not to load anybody that isn't a union man and hasn't a union ticket. With respect to the sale of poultry, you said we have no right to interfere with anybody selling poultry or anyone buying poultry. I was present in Major Daly's office during the hearing. That hearing took pretty much all day. Mr. Steinberg said he was going down there with his partner to load. I assured him at that time there would not be any interference with him. He later said he was going down there with some outside men. Mr. Kaufman told Mr. Osea[illegible] in front of Mr. Steinberg, and he told him, if he came down and loaded the poultry himself and his partner, that would be all right and you did not think there would be any interference, even if we did come down with strike breakers or anybody else, but to insure himself, it was more necessary for him to have police protection.

By Mr. Rice:

[fol. 1185] The Witness: I never spoke to Mr. Steinberg in the office, Mr. Kaufman did, and those are the exact words he told Mr. Steinberg. I don't think it would be necessary for Mr. Steinberg to have police protection down there. As far as the attitude of the men—I can't stand responsible for that. We haven't any trouble with anybody. Anybody that comes to West Washington Market comes with a union ticket. I instructed my men by the advice of counsel not to load anybody who hasn't a union ticket. I instructed my men not to load Aaron Steinberg. At the time of the trouble with Mr. Steinberg about three months ago, I did not instruct Max Keslin, I instructed the men working on the stands. I did not in any way convey that message to Max Keslin. I told them that Steinberg was not to be loaded if he hasn't a union tag. The union always requires marketmen to have a union tag to be loaded down there.

I did not know Roscoe C. Wood or hear of him until I saw him in this courtroom. I do not know that any union men paid a visit to him on May 12th, 1930. The first time I heard of it was the day that Roscoe Wood took the stand. If union men were to pay such a visit to a shipper's agent as was testified to here in court I couldn't say that I would be likely to know about it; probably I would, probably I would not. Carmen Gardi who testified he was a truck driver from Newark, I never saw until he was in this courtroom. I had nothing to do with his failure to deliver coops to Steinberg on May 9th. I didn't know that Steinberg was ordering empty coops from the National Box & Lumber Company of Newark, or that Steinberg had negotiated with the New Jersey Coop Company to get empty crates from them. I did not know that Steinberg had talked to Mr. Deitel concerning coops. I know Mr. Deitel. He attempted to negotiate a settlement between the union and Steinberg. He was attempting to arbitrate. Harry Shomer acted on [fol. 1186] behalf of the union. I did not instruct him what to do about it. Shomer knows his business. I never instruct Mr. Shomer anything. Steinberg never took three union men and two shochets after these negotiations with Mr. Deitel and it isn't a fact that I refused to take off the third union man after a week. I know Max Leavit of Philadelphia since the time of our trial, some part around there, I cannot tell exactly the date. I have met him. I never spoke to him outside of going out of the courtroom here last week. I never talked to him over the telephone. I was in Philadelphia once about two years ago and I did visit a Leavit. I don't know if it is him or not; there are a few Leavits out there. I didn't tell him anything. I did not instruct or warn Mr. Leavit not to deliver poultry to Steinberg within the past two months. If anyone in the union warned Mr. Leavit not to deliver poultry to Steinberg I would not hear about it and I did not hear about it.

[fol. 1187] DAVID M. SOLINGER, called as a witness, being duly sworn, testified as follows:

By Mr. Kaufman:

The Witness: I am an attorney and associated with your office. A week ago last Saturday you and I went to

Mr. Steinberg's place. We went into the rear of Steinberg's place and the truck was standing there. It is a Dodge truck with a shed over the driver's seat. The rear of the truck is open and there is a wooden railing about a foot high along the sides. In the rear was a lot of refuse, pillows, wood which seemed to be broken furniture, dust and dirt. The engine was dry, looked as though no water or gas had been in it for some time. The tires had about 45 pounds of air in them and were covered with a film of dust. The seat, the place where the *place where the* cushion for the driver to sit on usually is, the driver's seat was level with the floor of the car and there was an iron rod across the floor where the driver usually sits. That was three days after the day Mr. Steinberg testified that his car was broken. The engine was dry and dirty. There was a covering of soot in the bottom part of the engine. I forgot to say before that the fenders of the car were badly rusted and the bumper in front was half broken being on the left hand side of the car looking forward. The left hand side of the bumper was missing and dragging down towards the ground. The left front fender was rotted away from the running board of the car and it was broken between the running board and the fender itself. Apparently that was not any of the fresh breaks that Mr. Steinberg complained about. Mr. Kaufman asked Steinberg to show us which one of the tires had been cut and he stated it was the right rear tire looking forward. The tire seemed to have what would be 45 or 50 pounds of air in it. Mr. Kaufman asked him where it had been cut. He shrugged his shoulders and said it didn't amount to much. We looked and didn't find [fol. 1188] the cut. Then he looked to find the cut and said he couldn't find it. It did not look as though that car had been recently used. The car had obviously been hit with something.

[fol. 1189] HARRY SHOMER, called as a witness, being duly sworn, testified as follows:

By Mr. Kaufman:

The Witness: I did not hear anything about the breaking or alleged breaking of Mr. Steinberg's car until he tes-

tified about it here. I made an investigation to find out if anyone connected with the union had anything to do with it and my investigation could not find anyone. I know Mr. Deitel. He sat as an arbitrator attempting to adjust the difficulty between Mr. Steinberg and the union. As they left the meeting it was understood that he would take three men for the first week and one shochet, and that I was to take away one man at the end of the first week. He practically started his business the first of the week and would let us know. The following day there was a message in the market that Steinberg called up. I immediately called up Steinberg and spoke to him on the wire. He said I am practically settled with you.

That is the third time he said that, that he settled with me but I cannot settle for the shochtim union. He said he wanted one shochet but would not pay the price. He never asked me to send the three men to him.

I never saw Roscoe C. Wood until I saw him in court here. I do not know anything about the sale of that car of poultry or anything about the incident in Philadelphia that Mr. Rice asked Mr. Herbert about. I don't know this man Leavit who testified here; never spoke to the gentleman. I know the driver who was driving the truckload of coops to Mr. Steinberg's place. I don't know his name was Gardi. We told him there was a strike in Steinberg's place. He said he didn't know there was a strike. I said it is up to yourself. I was up there at the time, at Steinberg's market, when Mr. Gardi arrived. I just happened to pass there. I [fol. 1190] make the road quite often. There was Kaufman and myself there, that's all. I didn't see any crowd of other union men hanging around Steinberg's market. When I passed Steinberg's market I was going around the corner, to Bloom Brothers Market. I go around there quite often, to the different markets collecting dues. There weren't any union men at Steinberg's market. I stopped at Steinberg's market to see what was going on. I saw empty coops, I wanted to see what was going on, going along in our business capacity, to Bloom Brothers I just happened to pass there. I didn't stop in front of the place, but around the corner and they walked back. I didn't talk to Gardi myself, he was told there was a strike here and are you a union man. There were two or three of us there. I don't remember who the third one was; I didn't speak to the man myself; I don't know the man. I

heard the conversation but I don't remember who told him. The third man was not a union man. I don't remember if there was a third man or not; Kaufman and myself were there.

By the Court:

The Witness: It was not me who spoke to Gardi; I don't remember if it was Kaufman spoke to him or not.

By Mr. Rice:

The Witness: I have not at any time instructed union men not to load poultry for Steinberg. I do not know of any union official or any union member who has ever instructed any other union man not to load poultry for Steinberg. I don't know if he was unable to get poultry or not in West Washington Market. I do not know that Steinberg attempted to get coops from the New Jersey Coop Company or anything about his having ordered poultry from Nebraska. I don't know Roscoe C. Wood.

Mr. Rice: Your Honor, I see no purpose in examining this witness further.

The Court: I don't see that his testimony throws much [fol. 1191] light on the situation. It certainly does not convey a good light to me.

Mr. Kaufman: I don't understand why a man called here to testify should testify like that. I don't understand why if there were two men there, you and Kaufman, and you heard the conversation, I don't understand why you should be afraid to say who had the conversation. The testimony here concerns not any one man but all the members of the union, five or six hundred.

Mr. Rice: May we have the stenographer read the first few sentences of his testimony in which Mr. Shomer testified he told Gardi there was a strike there.

Mr. Kaufman: It is conceded that at first he did so testify; then he testified that Kaufman said it; then he testified he didn't know who told about it.

By Mr. Kaufman:

The Witness: The one who told Mr. Gardi there was a strike there was Mr. Kaufman. I didn't see any other union men around there or not.

By Mr. Rice.

The Witness: It isn't a fact that there were 12 or 15 other union men there. If there was, I would know about it; I don't remember any being there. I know all of the men in Local 167 so that if any were there I would know about it.

[fol. 1192] CHARLES HERBERT, called as a witness, being duly sworn, testified as follows:

By Mr. Kaufman:

The Witness: I did not hear anything about the breaking of Steinberg's car, only what I heard in this courtroom. I know Mr. Deitel and was present at the time when he sat as an arbitrator. I agreed to send Steinberg one shochet. He said he would ring up and let us know when he would like him. He called up Mr. Shomer and said to him that I cannot get along with the shochet. That's what I heard. He never asked for a union shochet. As a result of Mr. Deitel's arbitration he didn't want to pay even $50. We didn't agree on any price. He said he would let me know.

I don't know Roscoe Wood. The first time I ever saw him was when he took this stand right here. One day recently when I went into Steinberg's place I did not say I would fix him. I never said anything. All I did was to look into the place and walk out. That's all I did. I was not in there one minute. It is my practice to make the rounds of all the marketmen. I noticed empty coops on the sidewalk, about forty of them, and I passed there and just stopped in for a second and went out. I wanted to see who was working. That was on a Thursday morning if I can remember.

By Mr. Rice:

The Witness: When I went into Steinberg's market I didn't know whether he was employing any union shochtim. I went in to see. I know what marketmen are employing union shochtim. I didn't know as a fact that Steinberg was not employing any union shochet at that time. He had a scab in there at one time besides this man Javitz. I knew that Javitz wasn't a union shochet. I was sure that Stein-

berg was not employing any union shochets at that time but I went in to see if any of my men were scabbing there. You never can tell. It is bad times now. They will do any- [fol. 1193] thing. I go into every market; I don't pass up anybody. I went into Steinberg's market only once a week. On these occasions I didn't say anything to Steinberg. I was actually afraid that some of the union shochtim would scab for Steinberg. I wanted to see who was working there. I also went there for the purpose of seeing whether my men were scabbing. He had poultry there. When I looked and saw his poultry I never said anything to him. It was nothing to me how much poultry he had. He had it. I didn't care how much poultry he had. I did not stop him from getting poultry. I do not know any union men who did stop him.

[fol. 1194] DAVID M. SOLINGER, recalled.

By Mr. Kaufman:

The Witness: When we went to Steinberg's place there was some poultry on the lefthand side. I couldn't tell offhand how many they were stacked up. I believe there was some on trucks, too.

The Court: As far as that is concerned, your men can refuse to load but if they are going to use that to limit a sale in commerce, I think that is going too far.

Mr. Rice: Suppose that Steinberg attempts to purchase poultry from a commission man, and that commission man sells him, and thereupon there is a strike in his place. Would your Honor be willing to serve notice on the union——

The Court: I shall not state what I might find as far as that is concerned until I hear the circumstances; but I want to say to you men that all such circumstances will be taken into account if there is any further interference. No union man has to work there if he does not want to, and no union man has to load the poultry, but as long as there are merchants who are willing to sell and who are selling to all customers and who are willing to serve him, I am not going to have him intimidated so that he is fearful of

selling poultry, because that is a matter outside of the issue.

Mr. Rice: If your Honor please, I do not see that there is anything further for us to do.

The Court: Only in the event that he wants to make peace with the union and employ union men. If he wants to do that, that is a matter for he and the union to thresh out as to terms, but I want to say to the union again, that the union must not interfere with him. I will say this, that if there is any further interference with him that is attributable to the union, I want you to let me know.

At the close of the hearings the Court did not make any findings or enter any orders or take any action against any of the defendants.

[fol. 1195] EXHIBIT "B"

Poultry Schochtim Union of Greater New York, Local 440, Affiliated with the American Federation of Labor

Business Office: 229 East Broadway

Tel.: Orchard 9602

This agreement made and entered into by and between the firm of Hecht B., 7 Johnson Ave., Bklyn., party of the first part and Poultry Schochtim Union of Greater New York, Local 440, A. F. of L., party of the second part, shall govern all wages, hours and conditions herein set forth and the same to go into effect the first day of January, 1931, and terminate the 31st day of December, 1932.

Section 1. All wholesale Schochtim to receive $65.00 per week, salary to be paid weekly with no half days pay. Schochtim employed in strictly retail markets shall be paid $45.00 per week and up. All helpers, Schochtim, who work Thursday and Friday to receive $30.00 and if the helper will also work Saturday night, he is to be paid $35.00. Steady employees if laid off during the week shall receive no less than a full week's pay.

Section 2. The employer shall pay, in addition to the above rate of wages twenty-five (25%) per cent for Schochtim and helpers who are employed in Wholesale and Retail Markets for each of the following weeks: For the first days of Passover, and the second days of Passover, the week of Shevous, the week of Rosh Hashono, Yom Kippur, first days of Succoth, and the second days of Succoth, and the week of Thanksgiving.

Section 3. Hours of employment for wholesale Markets shall be as follows: On Monday, Tuesday, and Wednesday from 7 A. M. to 12 noon; and from December 1st to February 15th, Wednesday to 2 P. M., Thursday from 5 A. M. to 5 P. M.; Friday from 6 A. M. to 12 noon; Saturday night no more than three hours starting one-half hour after sunset from March to September and one hour after sunset from October to February.

Section 4. Hours of employment for Strictly Retail Markets shall be as follows: On Monday, Tuesday, Wednesday, from 8 A. M. to 2 P. M.; Thursday, from 7 A. M. to 7 P. M.; Friday from 7 A. M. to 12 noon; Saturday night no more than three hours starting one-half hour after sunset from March to September and one hour after sunset from October to February. (Under no circumstances shall a Schochet who starts at 7 A. M. work later than 12 noon.)

Section 5. The hours of Schito of the day preceding Erev Yom Tov for wholesalers only shall be from 5 A. M. to 6 P. M.; and of the day of Erev Yom Tov, from 5 A. M. to 12 noon. The hours of Schito of the day preceding Erev Yom Tov for strictly retailers shall be from 6 A. M. to 7 P. M. and of the day of Erev Yom Tov from 6 A. M. to 12 noon.

Section 6. No employee shall report for work before the regular starting hours as stated above.

Section 7. It is understood and agreed that the starting hours may be changed in accordance with the agreement of Local 167, I. B. of T.

[fol. 1196] Section 8. Under no circumstances shall a Schochet be employed for more than six days a week. In Boroughs where Schochtim are employed Sunday, there

should be no killing Saturday night and in Boroughs where the killing is done Saturday night there should be no killing on Sunday.

Section 9. No employer is permitted to send or transfer any Schochet from one market to another.

Section 10. The number of Schochtim to be employed is to be determined as follows: For the first fifty (50) coops or less, one (1) Schochet, from fifty (50) till eighty (80) coops a Schochet and a helper for Thursday, Friday and Saturday night; from eighty (80) till one hundred (100) coops, two (2) Schochtim for the whole week; from one hundred (100) till one hundred fifty (150) till two hundred fifty (250) coops three (3) Schochtim and a helper; from two hundred fifty (250) till three hundred (300) coops, four (4) Schochtim for the whole week.

Section 11. It is understood and agreed that a helper shall be employed a full day and under no circumstances to work part time.

Section 12. It is further understood and agreed that only members of the Poultry Schochtim Union of Greater New York, Local 440, with paid-up cards shall be employed, and such employment shall be obtained only through the office of Local 440 or its authorized agents.

Section 13. It shall not be a violation of this agreement if any member of the Local 440 A. F. of L. refuse to work with a man or men not complying with this agreement or who are not members of Local 440.

Section 14. Nor shall it be a violation of this agreement if members of Local 440, A. F. of L. refuse to work with non-union chauffeurs, stablemen and helpers, said chauffeurs, stablemen and helpers must be union men and only those who are affiliated with A. F. of L.

Section 15. Every Schochet must get rest of at least three hours on Thursday.

Section 16. A Schochet being a market man shall not kill any poultry but shall employ Schochtim of Local 440.

Section 17. The employer hereby agrees not to kill or have killed any treife poultry for Jewish butchers.

Section 18. The employer hereby agrees that no Schochet shall be permitted to kill treife poultry of any kind for Jewish butchers and chicken dealers.

Section 19. The employer is not to demand and no Schochet or helper is to perform any additional services besides that of poultry killing.

Section 20. Any secret agreements between employer and the Schochtim in violation or tending to violate the rules and regulations of the Union, and any agreements as to security or to pay rent by the Schochet, or any other promises shall be null and void and no binding effect.

[fol. 1197] Section 21. No employer is to have or permit his Schochet or helper to kill poultry for an employer whose Schochtim are on strike.

Section 22. Should any differences arise between employer and employee, the same shall be submitted to the representatives of both parties for re-adjustment, and it is hereby agreed that no strike or lockout shall be declared, pending such adjustment.

Section 23. The Union shall have full power to send its duly authorized representatives to the place of business of the employer at any time to investigate and determine whether the terms of this contract are being complied with.

Section 24. Be it further agreed that this agreement shall be binding upon the parties who signed the same and upon all the members of an Association or organization signing the same upon any organization or Association succeeding to any organization or Association signing the same with the same force and effect as if they and each of them were parties to this agreement.

In witness whereof the parties hereto have hereunto set their hands and seals this — day of Jan. 5, 1930.

For the firm of —— ——: (Signed) Barney Hecht, 7 Johnson Av. For Local 440, A. F. of L.: (Signed) Chas. Herbert, Bus. Agt.

DEF'TS' EX. H

Shairduck Live Poultry Market, Inc.

Comparison of Sales Prices of Poultry Charged to J. Miller and Cost of Purchases by Shairduck Live Poultry Market, Inc., July 31, 1931, to November 27, 1931

Week end. & inv. num.	Type of Poultry: Fowl Sales	Fowl Cost	Broilers Sales	Broilers Cost	Ducks Sales	Ducks Cost	Leghorns Sales	Leghorns Cost	Rebates
7/31 #1340	28–30	24–25	33–34	26	.....	.....	25	21	1c per lb.
8/7 1413	29–30	24	33–35	26–27	25–26	19	.....	.....	" " "
8/14 1472	28–29	22–24	33	26–27	24–26	19	.....	.....	" " "
8/21 1498	27	21–24	31–33	26–27	23	16–21	24	18	" " "
8/28 1559	29	24	29–31	23	27	20	23	18	" " "
9/4 1637	29–30	25	29–30	22–23	22	18	23–25	18	" " "
9/11 1663	33	25	33	23–25	28	20	26	18	2c " "
9/18 1700	32	24–25	32	22–23	24	22	24	18	" " "
9/26 1762	35	26–27	35	24–25	28	22	.....	.....	3c " "
10/2 1814	32	23–24	30	23–24	25	18	25	18–19	" " "
10/9 1885	28	20–21	24	17–20	30	23	23	15	" " "
10/16 1927	30–32	21–23	30	20	25	19	24	19	" " "
10/23 1976	32–34	24–26	30–32	22–23	30	23	20	15	" " "
10/30 2025	32–33	24–25	30–31	19–22	28	21	23–26	18–19	None
11/6 2071	30–32	21–22	29–30	18–22	28	19	20	14	3c per lb.
11/13 2134	27–30	20–23	29	22–23	.....	.....	.....	.....	1c " "
11/20 2182	26–27	20	23–24	18	20	14	20–21	16	" " "
11/27 2230	28	24	23–25	18–20	20	17	22–23	18	Bill Unpaid
Averages (In Cents)*	30.00	23.36	30.00	22.68	25.50	19.50	23.10	20.14	1.76

*Includes Chicks.

[fol. 1199] DEF'TS' EX. I

David Marshall, Certified Public Accountant, 220 Fifth Avenue, New York

Caledonia 5-7990

December 5th, 1931.

Shairduck Live Poultry Market, Inc., 506 East 156th Street, New York City.

Attention of Mr. Shair

GENTLEMEN: In accordance with your instructions, I have made an examination of your books and records of account to determine the sales prices of poultry sold to your customer J. Miller of 638 Kelly Street, New York City, for the period of 18 weeks beginning July 31, 1931 to November 27, 1931. The purpose of this examination is to compare these prices with the cost of poultry so as to determine the average gross profit per pound derived from sales to this customer.

The source of the sales price information was the sales invoices rendered weekly to J. Miller. Cost prices were taken from purchase bills received from Commission houses located in West Washington Market. The largest percentage of cost prices used were taken from charges made to your corporation by J. N. Norris from whom the greatest amount of poultry was bought.

In considering the average sales price for various types of poultry charged, the rebates averaging one and three quarters cent- per pound taken by J. Miller at the time of making payment must be deducted.

Exhibit "A" which shows the comparison of sales and cost prices may be summarized as follows:

Type	Average sales price, rebates deducted	Average cost price	Average gross profit
Fowl.....	28.34 cents	23.36 cents	4.98 cents
Broilers....	28.34 "	22.68 "	5.66 "
Ducks.....	23.74 "	19.50 "	4.24 "
Leg. Fowl..	21.34 "	20.14 "	1.20 "

Respectfully submitted.

David Marshall, Certified Public Accountant.

[fol. 1200] DEFENDANTS' EXHIBIT J

The Producers' Price-current, New York, Saturday, September 19, 1931

Vol. 74. No. 254

Live Poultry Unloadings

	Freight	Express	Total
This week	277	*29	306 cars
Last week	227	37	264 cars
Same week last yr	316	62	378 cars
Since Jan. 1	6996	1428	8424 cars
Same time last year	7187	1484	8671 cars

*Estimated.

Freight—Fowl market has improved steadily since the opening of the week and it closes quite firm. Continued hot weather on Monday and Tuesday served to kill off any interest, and this was augmented by the fact that slaughterhouse men still were pretty groggy from death losses over the week-end. The one hopeful sign was the very light reported receipts, listings totalling only 233 cars; receivers discounted the accuracy of that total but even an increase of twenty cars was regarded as constituting an inadequate supply, especially under more favorable weather conditions. The surprise has come, however, in the strength displayed under the greatly increased receipts and the cooler weather has undoubtedly had more of an influence than expected. One of the natural results of these conditions has been the fewer cars selling at or below the basic price of 22¢, and the larger number of cars selling at the highest premiums. On Monday and Tuesday we doubt if any cars exceeded the premiums quoted but from Wednesday on an increasing quantity of colored fowls was placed at an additional cent over any price or premium quoted. A good many Leghorn fowls have been in this week's cars and they dragged at the opening but market has been in much better shape since Tuesday.

Cars have run considerably heavier to chickens this week, as usual prior to Yom Kippur, and market early was exceedingly sluggish, stock being forced out at all sorts of prices in the effort to clear. A little improvement occurred in finest qualities on Wednesday with average grades still weak and market definitely turned in sellers' favor on Thurs-

day, closing quite firm on Friday; Leghorn chickens steadily advancing. A good many Rock chickens have come separated in the cars and they are showing varying quality. It is well for shippers to understand that under average trading conditions, it is almost impossible to sell above the basic price when all Rocks are taken out, and that an additional cent above any premium given is obtained almost every day for pet marks of chickens with a considerable mixture of Rocks, fact a 2¢ additional premium is obtained in rare instances. Old roosters sell well. Turkeys and ducks favor sellers and geese clear promptly.

[fol. 1201] Today 32 cars were in, all of which are being unloaded; contents were 968 coops colored fowls, 175 coops Leghorn fowls, 1,414 coops colored chickens, 140 coops Leghorn chickens, 33 coops cocks, 40 coops ducks, 2 coops geese, 2 coops turkeys 2 coops rabbits, 4 coops pigeons. Fowls and chickens entirely in sellers' favor and higher with the great bulk of the stock selling today above the average markets. In addition to the premiums given below a further cent is being charged for Indiana grade fowls and 1@2¢ further is being charged for pet marks of colored chickens with a heavy mixture of Rocks. Ducks easier.

Express and Truck—Receivers made every endeavor to keep our receipts of fowls very light on Monday and Tuesday but since then arrivals have increased rapidly, demand for fancy stock was keen and receivers refused to sell such except at a 2¢ advance over any premium quoted, a good many colored fowls being placed on that basis; market decidedly firm on Friday and still higher prices were anticipated for selected stock. Rock chickens sold only fairly as a rule, and Reds were quite slow and weak though both varieties closed stronger on Friday; very few Leghorn chickens have come in and they are bringing relatively extreme values, some peddling sales on Friday reaching 25¢. Long Island spring ducks in light supply this week. Turkeys eased off from the former extreme values. Pigeons and squabs in liberal supply and slow sale. Rabbits generally dull.

Colored fowls were firm again today and fancy were selling almost entirely on the basis of 1@2¢ above any price or premium quoted. Fancy Leghorn fowls also firm and fine qualities of all kinds of chickens are wanted.

About 2,600 L. I. spring ducks came in today on order. Guineas easier.

Because of the particular methods of trading existing in the live poultry market, it is specifically stated that our quotations are based largely on willingness and ability to buy and to sell; at times reported sales are ignored when at variance with this condition, and the quotations are given without prejudice to any sales which may be consummated before or after the quotations are established each day.

Freight

Fowls, colored, heavy, lb		@	*
Fowls, colored, average heavy		@	23
Fowls, colored, light to medium	21	@	22
Fowls, Leghorn		@	19
Chickens, colored, fancy		@	**
Chickens, colored, average		@	22
Chickens, colored, light to medium	19	@	21
Chickens, Leghorn		@	20
Chickens, Rocks	25	@	28
Old roosters		@	14
Turkeys, hens		@	30
Turkeys, toms		@	22
Ducks, western		@	16
Ducks, southern		@	14
[fol. 1202] Geese		@	13
Pigeons, pair		@	20
Guineas, pair	60	@	80
Rabbits, lb.		@	10

*Sold at 1@2¢ premium and fancy heavy, at an additional premium equivalent to 26¢.

**Sold at 1@2¢ premium, equivalent to 24¢.

Express and Truck

Fowls, colored, lb	18	@	27
Fowls, Leghorn	16	@	21
Chickens, Rocks, fancy		@	28
Chickens, Rocks, average		@	25
Chickens, Rocks, poor		@	22
Chickens, Reds	22	@	25
Chickens, Leghorns		@	23
Pullets, Rocks	28	@	31

Old roosters		@	15
Turkeys, hens		@	35
Turkeys, toms		@	25
Ducks, Long Island, spring		@	24
Ducks, Long Island, breeders		@	
Ducks, other nearby	16	@	18
Ducks, Muscovey		@	13
Geese, nearby		@	15
Geese, swan		@	10
Pigeons, pair	20	@	
Squabs, pair	20	@	
Squabs, jumbo, pair	50	@	1.00
Guineas, pair	70	@	1.00
Rabbits, lb.	10	@	20

(Here follow Exhibits "N" and "O", sales tickets, side folios 1203 and 1204 & 5)

EXHIBIT "N" 9064 12

Tel. Ambassador 4591 J. HARRISON, Mgr.

MAJESTIC
LIVE POULTRY MARKET

1456-1460-39th STREET

Brooklyn, N. Y., Nov 26 1931

Sold to Cash Sales

Received from MAJESTIC LIVE POULTRY MARKET, Live Poultry in the quantity specified below, to be sold immediately on account of MAJESTIC LIVE POULTRY MARKET, as consignors, and the cash delivered immediately at the net price set down against each item or the goods returned at once.

ITEMS	WEIGHT	PRICE	AMOUNT
FOWLS			
CHICKENS	232	30	69 60
BROILERS			
GEESE			
DUCKS	96	25	1 50
CAPONS			
TURKEYS			71 10
ROOSTERS			
=		Paid by check	
S			

No claims allowed for short weight unless ticket is signed by driver.

THE POTTER PRESS BOSTON 12306

No 472- 6

Tel. Ambassador 4501 J. HARRISON, Mgr.

MAJESTIC
LIVE POULTRY MARKET

1456-1460-39th STREET

Brooklyn, N. Y., 11/30 193 1

Sold to 4704-16

Cash Sale

Received from MAJESTIC LIVE POULTRY MARKET, Live Poultry in the quantity specified below, to be sold immediately on account of MAJESTIC LIVE POULTRY MARKET, as consignors, and the cash delivered immediately at the net price set down against each item or the goods returned at once.

ITEMS	WEIGHT	PRICE	AMOUNT	
FOWLS	63½	28	17	88
CHICKENS				
BROILERS				
GEESE				
DUCKS				
CAPONS				
TURKE'				
ROO				

Paid

Cash in register

EX O

No. 472-43

20

No claims allowed for short weight unless ticket is signed by driver.

THE POTTER PRESS BOSTON 12385

[fol. 1206] DEFENDANTS' EXHIBIT Q

Bronx Poultry Dealers Mutual Protective Association

Application for Membership

Name: Classon Point Live Pltry Mkt. Inc.
Address: 1908 Patterson Ave.
Voting Member: Isreal Goldberg.
Initiation fee of $50.00, must accompany this application.

The applicant hereby agrees to become a member of the Association for one (1) year from this date, and to pay the dues prescribed and obey the by-laws of the Association.

The Association shall furnish to all members in good standing, without extra charge, with credit information, service, collection service, auditing service, and such other service as may be decided upon by the Association from time to time, which may be for the best interests of the members of the Association.

Dated October —, 1931.

(Signed) Isaac Goldberg.

[fol. 1207] DEFENDANTS' EXHIBIT R

For Credit Information

To Harlem and Bronx Live Poultry Board of Trade, Inc.:

1. Customer's Name: —— ——.
2. Address: ——. Tel. No.: ——.
3. State whether Individual, Partnership or Corporation. ——. Give full names of Officers or Partners. —— ——.
4. How long are you engaged in Butcher or Poultry Business? ——.
5. How long are you at present location? ——.
6. State previous locations, if any. ——.
7. State names of Slaughter Houses you are now dealing with. ——.
8. Are any of your fixtures or equipment Mortgaged? ——. If so, state name of Mortgagee and amount owing. —— ——. $——.
9. State name and location of Bank. ——

10. Have you ever failed in business? ——. State particulars. ——.

11. What is your average weekly business in poultry? $——; other products? $——.

The foregoing information has been carefully read by the undersigned and is hereby represented to be true in every particular, and it is understood that such information may be issued to members of the Harlem and Bronx Live Poultry Board of Trade, Inc. and that such members may rely upon the truth of the above statement in extending credit to the undersigned.

Name: —— ——, by —— ——, (State Official Title:) ——.

1208

Name of Market Morris Fleisher Inc (NOTE—For reorganizations use other side) Week No. 38

Combined Statement and Trial Balance—For Week Ending SEP 18 1931 193

U. S. Dist. Court,
S. D. of N. Y.
Ex. J
DEC 10 1931
6.52-60

BILL No.	NAME	POULTS Lbs.	POULTS Amount	CHICKENS Lbs.	CHICKENS Amount	SUCKS Lbs.	SUCKS Amount	ROOSTERS Lbs.	ROOSTERS Amount	GEESE Lbs.	GEESE Amount	TURKEYS SUNDRIES Lbs.	TURKEYS SUNDRIES Amount	TOTAL Lbs.	TOTAL Amount	TRIAL BALANCE Dr.	TRIAL BALANCE Cr.	ACCOUNT

WEEK NO. 39

PROFIT & LOSS SUMMARY—For week ending Sept 18 1934

SALES	$ 8005.04	
Less: Allowances	53.14	7951.90
COST OF GOODS SOLD	$ 7182.86	
Less: Allowances	63.54	7119.32
GROSS EARNINGS FROM SALES	$	834.58
EXPENSES		917.12
PROFITS for the week	$	82.54
LOSS PROFITS		764.03
TOTAL PROFITS to date	$	7246.57

(Note: LOSSES are shown in RED)

ANALYSIS OF EXPENSES—

Salaries (Others (or Partners))	$	200.-
Salaries Office		80.-
Salaries Salesmen and Weighmasters		
Salaries Labor		375.-
Salaries Selection		165.-
Total Salaries and Wages	$	
Weighmasters' and Other Employees' Expenses		
Buying and Other Car Expenses		16.20
Feed		88.76
Crates, Cartage, Freezage and Expressage		
Automobile and Stable Expense		20.-
Bags, Paper and Twine		
Market Supplies (Towels, Sawdust, Grease, etc.)		17.76
Advertising and Subscriptions		
Entertainment and Promotion		
Telegrams and Telephone		
Traveling Expenses		
Inspection and Dues		
Rent		
Insurance		
Light, Heat and Water		
Taxes		
Legal and Collection Expense		
Auditing		15.-
Stationery, Printing and Postage		2.85
Ordinary Repairs		
Dirt Removal		7.-
Bank Charges		
Commissions		
Interest and Discount		
Depreciation (Reserve for)		
Taxes (except Income Taxes and Water Bills)		
Mortgage Interest		
Real Estate Taxes		
Charity and Donations		2.-
Debts Written Off		
Miscellaneous (use as little as possible)		
TOTAL EXPENSES	$	917.12

Keep this a Private Account

(NOTE: Should any of the above expenses represent INCOME instead of EXPENSE, then show the amount in RED)

BALANCES

(Open Accounts Not Sold This Week)

BILL No.	NAME	AMOUNT
		$

1210

Combined Statement and Trial Balance—For Week Ending SEP 25 1931 193

Name of Market Morris Gerber Inc

Week No. 38

(NOTE For recapitulation see other side)

BILL No.	NAME	FOWLS Lbs.	FOWLS Amount	CHICKENS Lbs.	CHICKENS Amount	DUCKS Lbs.	DUCKS Amount	BOOSTERS Lbs.	BOOSTERS Amount	GEESE Lbs.	GEESE Amount	TURKEYS SUNDRIES Lbs.	TURKEYS SUNDRIES Amount	TOTAL Lbs.	TOTAL Amount	TRIAL BALANCE Dr.	TRIAL BALANCE Cr.	ACCOUNT
	U. S. Dist. Court, S. D. of N. Y. - Ex. X DEC 10 33 652-30	10105	2833 09	10768	3411 74	711	67 83							21584	6313 06			Cash
		1987	309 80	3650	1148 08	65	19 35							7700	1977 03			Hyatt Bros
		316	53 46	7159	1557 54	103	24 43							15778	6334 41			Kinsley Inc
		511	153 31	1301	376 76									1812	530 07			Fred Stern
		6795	2027 14	4496	1436 16	1846	513 38							13287	3976 68			Morris Gerber Inc
		2096	614 13	2866	844 26	261	80 60							5223	1666 07			Cash
		3459	978 71	2446	783 98	140	41 11							6739	1973 30			
		703	204 88	1993	607 46	89	28 31							1885	540 65			
		201	57 57	100	40 —									5432	1709 67			
		7158	2256 59	28679	8607 04	3913	1068 61							47944	14201 24			Total Sales
		315	89 85											315	89 85			A Wasserman Inc
		965	80 30											965	80 30			A Daingerfield
		461	87 59											461	87 59			Independent P C Co Inc
		1016	264 16											1016	264 16			Chelsea Cove P C Co Inc
		2301	506 22											2301	506 22			Samuel Lieberman
		478	90 82											478	90 82			I Zlotnick & Co Inc
		202	41 40											202	41 40			I Zlotnick & Co Inc
		1450	290 —	930	223 20									2380	513 20			H J Hunt & Son Co
		788	204 88															
		162	32 40											950	237 28			Sol Frankel Inc
		1777	473 96	3841	921 84													
		839	218 23	2976	714 48									6361	1749 68			I J Schaul & Sons Inc
		309	61 80	989	247 25													
		630	170 10															
		808	161 60	954	228 96									3333	961 71			Chelsea Cove P C Co Inc
		940	184 60	975	201 50													
		1254	379 17	1581	379 44									2960	654 66			Independent P C Co Inc
		1563	400 80	1659	414 75													
		1199	299 80	803	193 72													
		1938	534 76	1993	538 04	148	39 48							6077	1496 43			I J Schaul & Sons Inc
		1911	477 99	5181	1343 44	60	9 60											
		1418	283 86	501	90 20	177	27 87											
		1869	450 63	1091	247 75													
		907	188 30	864	214 50													
		701	205 —	30														
		1359	366 93															
		183	34 77															
		1149	334 45															
		1959	489 75	716	179 84	218	39 24							17160	4944 65			Chas Pollock Co
		2570	744 00	3335	833 80	891	160 38											
		2149	536 17	10320	2696 90	99	17 82											
		1168	333 80	3443	861 34													
		1367	369 09	855	213 80													
		1199	479 80	837	209 36													
		1140	350 40															
		1167	339 70															
		978	1019 06	179	13 80									15923	3927 70			Chas Pollock Co
		1123	314 37	911	98 69									16835	4426 07			
		390	156 —	1448	399 44													
		1176	411 60															
		1273	273 80															
		27555	6450 69	37177	7935 61	4251	765 09							38832	15931 —			Stock 9/26/31
		888	310 80	2816	555 84	1148	229 60							44448	15446 93			
		857	199 87															
		586	58 60															
		1863	411 86															
		290	58 —															
		29555	6114 30	29829	7377 77	4131	837 58							58915	14331 65			Stock 9/26/31 — Cost of Goods Sold
		+ 197		— 950		— 118								— 971				

WEEK NO. 39

PROFIT & LOSS SUMMARY—For week ending Sept 25 to 31

SALES	17493.26	
Less:—Allowances	321.34	17171.12
COST OF GOODS SOLD	14391.45	
Less:—Allowances	192.29	14183.86
GROSS EARNINGS FROM SALES		2987.26 (14.4 per ct.)
EXPENSES		1749.01
NET PROFITS for the week		1238.25
PREVIOUS PROFITS		2356.67
TOTAL PROFITS to date		3594.92

(Note:—LOSSES are shown in RED)

ANALYSIS OF EXPENSES—

Salaries—Others (or Partners)	400.—	Keep these Payroll Analysis
Salaries—Office	20.—	
Salaries—Salesmen and Weighmasters		
Salaries—Labor	561.25	
Salaries—Scholastic	180.—	
Total Salaries and Wages		
Weighmasters' and Other Employees' Expenses		
Buying and Other Car Expenses	21.—	
Fuel	113.58	
Cream, Cartage, Freezage and Expressage		
Automobile and Stable Expense		
Bags, Paper and Twine		
Market Supplies (Towels, Sweaters, Coveralls, etc.)	14.71	
Advertising and Subscriptions		
Entertainment and Promotion		
Telegrams and Telephone		
Traveling Expenses		
Inspection and Dues		
Rent		
Insurance	50.—	
Light, Heat and Water	34.90	
Tips		
Legal and Collection Expense		
Auditing		
Stationery, Printing and Postage	4.30	
Ordinary Repairs		
Dirt Removal	7.—	
Bank Charges		
Commissions		
Interest and Discount		
Depreciation (Reserve for—)		
Taxes (except Income Taxes and Water Bills)		
Mortgage Interest		
Real Estate Taxes		
Charity and Donations	4.—	
Bad Debts Written Off		
Miscellaneous (use as little as possible)		
TOTAL EXPENSES	1749.01	

(NOTE: — Should any of the above expenses represent INCOME instead of EXPENSE, then show the amount in RED).

BALANCES
(Open Accounts Not Sold This Week)

BILL No.	NAME	AMOUNT

Combined Statement and Trial Balance—For Week Ending OCT 2 1931 193

Name of Market Morris Gentz Sons Week No. 39

NOTE For recapitulation see other side

	BILL No.	NAME	FOWL		CHICKENS		DUCKS		ROOSTERS		GEESE		TURKEYS SUNDRIES		TOTAL		TRIAL BALANCE		ACCOUNT
			Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Dr	Cr	
1		U. S. Dist. Court,	1901	315 17	2203	551 71									3944	766 83			
2		S. D. of N. Y.	1567	388 35	1867	470 78	4	7 20							3933	855 85			
3		Ex. 26	4735	1466 89	3540	1071 89	1413	390 87							10508	2879 35			
4			3544	896 55	3966	913 50	917	193 46							8804	1993 31			
5		DEC 10 1931	3494	875 99	3973	811 17	6	1 98							6941	1688 64			
6		252-30	879	183 41	1111	218 37	8	3 09							1998	404 96			
7			58	7 18	100	35 00									158	42 60			
8		9 fr 9 to	16043	5978 41	16500	4022 37	9343	629 26							34886	8630 04	Total Sales		
9																			
10					1677	368 94									1677	368 94		Independent Pc Co Inc	
11					1854	370 80													
12					1255	323 45									3607	703 85		Y J Stevens Sons Inc	
13			185	49 95															
14			360	72 00	197	97 48									742	169 43		Chas Collins Co	
15			780	179 40	1461	277 59													
16			349	71 87															
17			401	74 18															
18			596	101 32											3633	704 31		Jos J Hanck & Son Co	
19			3053	671 66	3857	674 98	111	19 98											
20			533	73 46															
21			798	141 84											8142	1581 74		Acme Comm Co Inc	
22							1417	311 74							1717	311 74		Samuel Baldwin	
23			650	117 —															
24			967	173 06															
25			3059	705 39	3535	514 58													
26			864	155 52	374	54 43													
27			495	89 10											10239	1804 98		Independent Pc Co Inc	
28			1999	361 75	1991	344 75	217	34 72											
29			163	29 34	895	143 75	655	131 00											
30			729	249 75	1963	180 71													
31			197	35 46															
32			991	208 11															
33			288	57 60			145	27 50							7900	1772 84		Chas Collins Co	
34			557	114 85															
35			586	88 60															
36			783	211 86															
37			290	58 80	3816	777 90	451	54 94							5225	1114 84		Stock 9/25/31	
38			166	29 88	905	76 95													
39			717	149 54	2934	389 17													
40			700	70 —															
41			1338	239 98															
42			234	42 17											6382	1086 57		Stock 10/2/31	
43			16239	3464 49	17936	3456 43	4545	544 94							36299	7445 86		Cost of Goods Sold	
44			— 295		— 936		— 184								— 1413				
45																			
46																			
47																			
48																			
49																			
50																			
51																			
52																			
53																			
54																			
55																			
56																			
57																			
58																			
59																			
60																			

WEEK NO. 39

PROFIT & LOSS SUMMARY—For week ending OCT 2 1931 19

SALES	9413.14	8630.04	8561.15
Less:—Allowances		68.14	
COST OF GOODS SOLD		7445.86	7381.79
Less:—Allowances		114.02	
GROSS EARNINGS FROM SALES		1252.26	1239.36 3% (per R.)
EXPENSES	Except	317.10	1049.31
PROFITS for the week		1078.16	190.05
LOSS PROFITS	Except	1049.31	615.32
PROFITS to date	NET	1049.77	1438.37
Week (Note:—LOSSES are shown in RED)		428.93	

ANALYSIS OF EXPENSES—

Salaries—Officers (or Partners)	700.—	Keep also a Payroll Analysis.
Salaries—Office	70.—	
Salaries—Salesmen and Weighmasters		
Salaries—Labor	346.75	
Salaries—Schoolboy	185.—	
Total Salaries and Wages	$	
Weighmasters' and Other Employees' Expenses		
Buying and Other Car Expenses	22.60	
Feed	69.29	
Coops, Garage, Forrage and Expressage		
Automobile and Stable Expense	5.55	
Bags, Paper and Twine	16.93	
Market Supplies (Troughs, Sawdust, Covers, etc.)	10.69	
Advertising and Subscriptions		
Entertainment and Promotion		
Telegrams and Telephone		
Traveling Expenses		
Inspection and Dues	5.—	
Rent	100.—	
Insurance		
Light, Heat and Water		
Tips		
Legal and Collection Expense		
Auditing	15.—	
Stationery, Printing and Postage	2.—	
Ordinary Repairs		
Dirt Removal		
Book Charges		
Commissions		
Interest and Discount		
Depreciation (Reserve for)		
Taxes (except Income Taxes and Water Bills)		
Mortgage Interest		
Real Estate Taxes		
Charity and Donations		
Debts Written Off		
Miscellaneous (use as little as possible)		
TOTAL EXPENSES	1049.31	

(NOTE: Should any of the above expenses represent INCOME instead of EXPENSE, then show the amount in RED)

BALANCES
(Open Accounts Not Sold This Week)

BILL No.	NAME	AMOUNT
		$

1214

Combined Statement and Trial Balance—For Week Ending OCT 9 1931 193

Name of Market MORRIS GERBER INC. Week No. 40

(NOTE For correspondence see other side)

BILL No.	NAME	FOWLS		CHICKENS		DUCKS		ROOSTERS SQUABS		GEESE		TURKEYS SUNDRIES		TOTAL		TRIAL BALANCE Dr.	TRIAL BALANCE Cr.	ACCOUNT
		Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount			
1		1611	29555	2493	49874									4104	78032			
2		935	19696	2482	39992									3417	[illegible]18			
3		4553	104392	3614	73279	195	5047							8168	132718			
4		3634	86819	3109	70886	51	1487							6796	159151			
5		3885	77851	1981	47906	35	970	[illegible]	1563					5918	128290			
6		1327	31286	1600	31281	18	991							2790	63598			
7		68	[illegible]	50	[illegible]									118	3076			
8		15863	340639	15136	343231	299	7955	13	1563					31311	664488	[illegible] Fish Co.		
9																		
10								13	938					13	938	Kirkeby & Co. Inc.		
11				67	8151									667	8151	Gaines & Co. Inc.		
12		596	10758											596	10758	[illegible] & Co. Inc.		
13		1371	29698	1658	18938													
14		1604	20875	1031	13941									5164	75109	Jewett, Kenney Co. Inc.		
15		573	8795	775	12345													
16				997	16014									2240	36934	G. J. Hawk & Son Co.		
17		1864	37480	76	1794													
18		587	8855															
19		3753	71397											6290	118684	Chelsea Fish P. Co. Inc.		
20		736	13987	361	9334													
21		581	8935	2154	23694									3911	50475	Independent Fish Co. Inc.		
22		644	17580	1769	19184													
23		918	13770	1836	40394	261	5744											
24		305	3025	1074	19496	69	1184											
25		1531	34151	2211	53064													
26				1088	19584													
27				469	8482									12048	228684	Chas. Cullen & Co. —		
28		166	2988	405	7695													
29		719	14965	2032	38912													
30		200	3800															
31		1138	25898															
32		734	13794											6287	109857	Stock 10/8/31 —		
33		642	13546	1707	30968													
34		1043	18414	585	11700													
35		538	6280	471	7670									5069	100527	Stock 10/9/31 —		
36		14997	290391	16058	294665	330	6846	13	938					33998	532783	Cost of Goods Sold		
37						31												
38		238		911										1167				
39																		
40																		
41																		
42																		
43																		
44																		
45																		
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57																		
58																		
59																		
60																		

916
1215

WEEK NO. 40

PROFIT & LOSS SUMMARY—For week ending Oct. 9— 1931

SALES	6644.85	
Less:—Allowances	161.77	6483.08
COST OF GOODS SOLD	5377.33	
Less:—Allowances	421.04	5956.29
GROSS EARNINGS FROM SALES		526.79
EXPENSES		1012.90 (3.1 per b.)
T PROFITS for the week		113.89
VIOUS PROFITS		929.23
TOTAL PROFITS to date		1043.12

(Note: LOSSES are shown in RED)

ANALYSIS OF EXPENSES—

Salaries—Officers (or Partners)	700
Salaries—Office	60
Salaries—Salesmen and Weighmasters	30
Salaries—Labor	295.75
Salaries—Schochtim	135
Total Salaries and Wages	
Weighmasters' and Other Employees' Expenses	
Buying and Other Car Expenses	40
Feed	29.25
Coops, Cartage, Forwage and Expressage	
Automobile and Stable Expense	9.08
Rags, Paper and Twine	
Market Supplies (Troughs, Sawdust, Gowns, etc.)	16.82
Advertising and Subscriptions	
Entertainment and Promotion	
Telegrams and Telephone	
Traveling Expenses	
Inspection and Dues	1.—
Rent	
Insurance	60.—
Light, Heat and Water	
Tips	
Legal and Collection Expense	
Auditing	
Stationery, Printing and Postage	
Ordinary Repairs	
Dirt Removal	14.—
Bank Charges	
Commissions	
Interest and Discount	
Depreciation (Reserve for)	
Taxes (except Income Taxes and Water Bills)	
Mortgage Interest	
Real Estate Taxes	
Charity and Donations	
Bad Debts Written Off	
Miscellaneous (use as little as possible)	
TOTAL EXPENSES	1012.90

Keep also a Payroll Analysis

(NOTE: — Should any of the above expenses represent INCOME instead of EXPENSE, then show the amount in RED)

BALANCES
(Open Accounts Not Sold This Week)

BILL No.	NAME	AMOUNT
		$

Combined Statement and Trial Balance—For Week Ending OCT 16 1931 193 Name of Market MORRIS GERBER INC Week No. 41

(NOTE—For recapitulations see other side)

BILL No.	NAME	FOWLS Lbs.	FOWLS Amount	CHICKENS Lbs.	CHICKENS Amount	DUCKS Lbs.	DUCKS Amount	ROOSTERS Lbs.	ROOSTERS Amount	GEESE Lbs.	GEESE Amount	TURKEYS SUNDRIES Lbs.	TURKEYS SUNDRIES ¢	TURKEYS SUNDRIES Amount	TOTAL Lbs.	TOTAL Amount	TRIAL BALANCE Dr.	TRIAL BALANCE Cr.	ACCOUNT
		1810	3v173	1897	460 31										3707	78v04			
		3044	44789	4196	54v73										4240	99044v			
		1511	28613	1947	4160v	107	1846								3565	71061			
		7453	171471	4516	115v68	795	15979								13764	30v718			
		2015	48305	2907	51755	107	3076								4729	103086			
		4477	133315	1858	45739										8184	179041			
		1476	37376	23	1859	33	296								37102	1v1v7v			
		65	1v3	60	v1—										1525	34853			
		21331	437341	14859	358783	1044	21647								37231	811575			Total Sales
	1111	1444	3												1111	14443			Samuel Parnes Inc
	1187	17805													1187	17805			Sol Frankel Inc
						178	3738								178	3738			Samuel Gutterman
						134	2814								134	2814			Wyandanch Farms Co Inc
	944	20724		2739	57041										3681	72765			I J Schenck & Sons Inc
	1103	19799		78	1560										1701	16159			Independent Ice Co Inc
	757	16654		1701	33338										1459	29994			J. Koenig & Pollac
	1077	24510		2673	53460														
	568	7384																	
	54	1094		784	16464										8013	83356			B. J. Hauck & Son Co
	1497	34054		674	13104														
	1944	45446		101	2020										1607	31865			B. J. Hauck & Son Co
	1716	24360																	
	1229	27038		871	16549										3259	51586			Samuel Hauck & Co Inc
	1035	12455																	
	816	18346		1414	28280	110	2240								3135	52046			Acme Comm Co Inc
	1730	36330		153	2754														
				1395	25900														
	3805	35063				76	1064												
	800	10686													5640	114140			Chas Callens Co —
	257	9841																	
	47	944																	
	4551	88811		819	15561	592	7104								4502	57978			Sol Frankel Inc —
	443	11109		1446	42940	116	1392												
	614	15504		1618	54978														
				10	200														
				77	1848														
	6745	135455		1707	44968										10092	1098446			Chas Callens Co —
	1053	18414		585	11700										41449	831v4			
	648	6480		481	9620														
	17471	483378		19319	489v5	1756	1831v												
	17918	303144		577	5817	69	1656								5069	100527			Stock 10/9/31 —
	595	13485		2345	44175	84	1704												
	757	25720		1395	29275														
	1015	15v2v5																	
	21739	375184		15894	324306	1101	1549v								7837	148944			Stock 10/16/31 —
															38731	7153114			
	907			1034		89													
															1500				

WEEK NO. 41

PROFIT & LOSS SUMMARY—For week ending OCT 16 1931

SALES	$8175.75	
Less:—Allowances	58.06	8117.69
COST OF GOODS SOLD	$7153.14	
Less:—Allowances	91.07	7062.14
GROSS EARNINGS FROM SALES		$1055.57 (13 % per Sls.)
EXPENSES		969.71
NET PROFITS for the week		$85.86
"EOUS PROFITS		$543.14
AL PROFITS to date		$629.00

(Note:— LOSSES are shown in RED)

ANALYSIS OF EXPENSES—

Salaries—Officers (or Partners)	$200.-
Salaries—Office	60.-
Salaries—Salesmen and Weighmasters	
Salaries—Labor	356.57
Salaries—Selection	152.-
Total Salaries and Wages	$
Weighmasters' and Other Employees' Expenses	
Buying and Other Car Expenses	15.-
Feed	97.28
Cream, Cartage, Freight and Expressage	
Automobile and Stable Expense	114.80
Bags, Paper and Twine	
Market Supplies (Troughs, Sawdust, Greases, etc.)	3.75
Advertising and Subscriptions	
Entertainment and Promotion	
Telegrams and Telephone	45.14
Traveling Expenses	
Inspection and Dues	1.-
Rent	
Insurance	
Light, Heat and Water	
Tips	
Legal and Collection Expense	40.-
Auditing	15.-
Stationery, Printing and Postage	
Ordinary Repairs	
Dirt Removal	7.-
Bank Charges	
Commissions	
Interest and Discount	
Depreciation (Reserve for—)	
Taxes (except Income Taxes and Water Bills)	
Mortgage Interest	
Real Estate Taxes	
Charity and Donations	
Debts Written Off	
Miscellaneous (use as little as possible)	
TOTAL EXPENSES	$969.71

Keep also a Payroll Analysis

(NOTE:—Should any of the above expenses represent INCOME instead of EXPENSE, then show the amount in RED).

BALANCES
(Open Accounts Not Sold This Week)

BILL No.	NAME	AMOUNT
		$

Combined Statement and Trial Balance—For Week Ending OCT 23 1931 193

Name of Market MORRIS GERBER INC Week No. 42

(NOTE For recapitulation see other side)

BILL No.	NAME	POWLS Lbs.	POWLS Amount	CHICKENS Lbs.	CHICKENS Amount	DUCKS Lbs.	DUCKS Amount	ROOSTERS Lbs.	ROOSTERS Amount	GEESE Lbs.	GEESE Amount	TURKEYS SUNDRIES Lbs.	TURKEYS SUNDRIES Amount	TOTAL Lbs.	TOTAL Amount	TRIAL BALANCE Dr.	TRIAL BALANCE Cr.	ACCOUNT
1		3908	63465	2945	66287									6853	129587			
2		2871	53789	3348	82461	9	390							5229	136270			
3		1199	28891	1657	41013									2856	69904			
4		7570	209745	4671	131286	815	16742					Liquids	560	13053	358413			
5		2490	59435	2731	65026	183	4561							5404	129082			
6		1873	46603	1562	40943	14	378							3449	87924			
7		150	1718	17	198									1446	19116			Wholesale
8														202	3318			Retail
9		19162	469426	16966	428811	1018	21901	WS Coop Co	32750			—	560	37146	1037448			Total Sales
10																		
11	2/24/31	501	9018											501	9018			FLECK - CO.
12		640	16640											640	16640			WERNER INC.
13	2/24/31	934	17746											934	17746			KASPIEW INC.
14	2/21	1502	40558											1502	40558			DANZIGER
15												—	400	—	400			KRAKAUER & CO.
16	2/24/31	2134	40546											2134	40546			INDEPENDENT
17	2/24/31	394	10244	2/21	788		1411											
18	2/24/31	356	6734	2/21	761		1293											
19	2/24/31	831	8403											1531	56443			FRANKEL INC.
20	2/24/31	1707	44380	2/21	398	2/24	570		7750									
21	2/24/31	937	6403	2/21	837													
22				2/21	613													
23				2/21	434													
24				2/21	1257									6475	143339			E & H HAWK
25	2/24/31	1854	37496	2/21	671													
26	2/24/31	998	14970	2/21	1093													
27	2/24/31	170	4080	2/21	751													
28	2/24/31	849	17445															
29	2/24/31	6446	167476	2/21	749	2/24	71		994					5866	116830			COLLINS CO.
30	2/24/31	1335	26560	2/21	730	2/24	344		6760									
31	2/24/31	1603	41670	2/21	1495													
32	2/24/31	851	17862	2/21	704													
33	2/24/31	1194	36826	2/21	1497													
34	2/24/31			2/21	99									8136	187563			COLLINS CO.
35	2/24/31	353	9178	2/21	1344													
36	2/24/31	688	13078	2/21	161													
37	2/24/31	1744	52600	2/21	957													
38	2/24/31	774	19706	2/21	1165													
39	2/24/31			2/21	519									7466	166331			SCHWAB - SONS INC.
40	2/24/31	1318	30314	2/21	577	2/24	69		1656					36135	795110			
41	2/24/31	595	13685	2/21	1345	2/24	86		1904									
42	2/24/31	753	17370	2/21	1395													
43	2/24/31	1015	25434	2/21	713		1111		18596			—	400	7837	148941			STOCK 10/23/31 —
44	2/24/31	861	16349	2/21	850									43004	1004101			
45	2/24/31	575	14430	2/21	946													
46	2/24/31	299	6434	2/21	300													
47	2/24/31	487	9870	2/21	911													
48	2/24/31	693	17487	2/21	1750													
49					99									5686	113237			Stock 10/23/31 —
50		19036	415890	16137	395848	1111	18596					—	400	39286	930714			Cost of Goods Sold
51		+ 136		— 166		— 100								- 1140				
52																	105919	Gross
53																113237		Stock
54																	67455	Miscellaneous
55																394186		Returns
56																	14700	Net Purchases
57																	81000	Ending Stock
58																17511		Delicat
59																11660		Cost of Sales
60																7300		Expenses Each
61																530850	530850	

Ruled with LEDGER-BILLS-DAILYBOOK IN-ONE. Designed by CHARLES LEWIS, C. P. A., New York. Manufactured by Corporate Printing and Loose Leaf Co., New York Form 15.

WEEK NO. 42

PROFIT & LOSS SUMMARY—For week ending OCT 22 1931 19

SALES	$9374.48	
Less:—Allowances	82.24	9292.24
COST OF GOODS SOLD	$8307.14	
Less:—Allowances	55.15	8251.99
GROSS EARNINGS FROM SALES		$1040.25 (2c per lb.)
EXPENSES		998.68
NET PROFITS for the week		$41.57
PREVIOUS PROFITS		628.98
TOTAL PROFITS to date		$670.55

(Note:- LOSSES are shown in RED)

ANALYSIS OF EXPENSES—

Salaries—Officers (or Partners)	$200.—	Keep also a Payroll Analysis
Salaries—Office	60.—	
Salaries—Salesmen and Weighmasters		
Salaries—Labor	317.25	
Salaries—Schechtim	170.—	
Total Salaries and Wages	$	
Weighmasters' and Other Employees' Expenses		
Buying and Other Car Expenses	15.—	
Feed	97.87	
Coops, Cartage, Ferriage and Expressage		
Automobile and Stable Expense	8.—	
Bags, Paper and Twine		
Market Supplies (Troughs, Sawdust, Gowns, etc.)	21.25	
Advertising and Subscriptions	10.—	
Entertainment and Promotion		
Telegrams and Telephone		
Traveling Expenses		
Inspection and Dues		
Rent		
Insurance	76.—	
Light, Heat and Water		
Tips		
Legal and Collection Expense		
Auditing		
Stationery, Printing and Postage		
Ordinary Repairs		
Dirt Removal	7.—	
Bank Charges		
Commissions		
Interest and Discount		
Depreciation (Reserve for-)		
Taxes (except Income Taxes and Water Bills)		
Mortgage Interest		
Real Estate Taxes		
Charity and Donations	5.—	
Bad Debts Written Off		
Miscellaneous (use as little as possible)	11.31	
TOTAL EXPENSES	$998.68	

(NOTE: — Should any of the above expenses represent INCOME instead of EXPENSE, then show the amount in RED).

BALANCES
(Open Accounts Not Sold This Week)

BILL No.	NAME	AMOUNT
		$
TOTAL BALANCES		$

1220

Combined Statement and Trial Balance—For Week Ending 00[illegible]9 1931 193

Name of Market MORRIS GERBER INC Week No. 43

(NOTE For recapitulations see other side)

BILL No.	NAME	FOWLS		CHICKENS		DUCKS		ROOSTERS		GEESE		TURKEYS SUNDRIES		TOTAL		TRIAL BALANCE		ACCOUNT
		Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Dr.	Cr.	
1		4068	3935	4673	5966	96	9[illegible]							9775	9935			
2		1548	3687	3093	5[illegible]49	5	75							3746	9414			
3		1198	2481	4508	3879	56	1008							2762	6349			
4		6[illegible]	1810	3528	8616	960	18387							10622	28843			
5		3009	7[illegible]37	4[illegible]9	5[illegible]89	98	683							5660	13609			
6		1991	3[illegible]6	1130	2[illegible]	13	371							3174	8849			
7		1911	3603	197	3[illegible]6	339	9497							1741	3387			
8				141	3[illegible]4									141	1[illegible]4			Return
9		16619	4[illegible]8	13579	3[illegible]99	1327	2[illegible]5							31619	7[illegible]718			Total Sales
10																		
11																		
12				165	11300									165	11300			J Kastner Inv
13		1187	3084											1187	3084			Charles Co. A/C Inv
14				1714	3085									1714	3085			J Wrenn Inv
15		1905	9930											1905	9930			Independent Poultry Co Inv
16				505	8585									505	8585			J Block & Co Inv
17		338	6084											338	6084			J Kaminsky Inv
18		1866	3358[illegible]															
19		789	1736[illegible]															
20		1775	1[illegible]	504	1058[illegible]									2755	5431			J Kaminsky Inv
21				277	4[illegible]													
22				1316	2[illegible]													
23		578	1[illegible]	1001	1[illegible]									3810	7360			J J Klausner Inv
24		923	2[illegible]	915	2[illegible]	192	3[illegible]											
25		1745	3315	113	2[illegible]	219	3066							5732	12063			L J Schwartz & Sons Inc
26		1687	3[illegible]	710	3780	537	7196											
27		309	5516	197	3476	339	9497											
28		893	19389															
29		369	66[illegible]															
30		986	1[illegible]	907	[illegible]									4093	7984			Class Cattle Co Inv
31		159	2886	430	8[illegible]													
32		807	1[illegible]	1116	2[illegible]													
33		560	1[illegible]	380	8350	136	1904											
34		903	18197	337	7686	144	3168											
35		666	1736[illegible]	153	3519													
36		115	2[illegible]	894	2[illegible]													
37		861	1[illegible]															
38		861	16[illegible]	850	1870									8515	18974			Class Cattle Co Inv
39		555	1[illegible]	996	1[illegible]													
40		249	6[illegible]	300	49													
41		187	5[illegible]	911	9[illegible]													
42		653	1[illegible]	175	3[illegible]													
43				99	2[illegible]													
44		1085	2[illegible]	[illegible]	[illegible]	[illegible]	[illegible]							5886	14333			Stock 10/31/31
45		849	2[illegible]	917	1[illegible]	28	6[illegible]											
46		603	1[illegible]	598	8765													
47		1[illegible]	4[illegible]															
48		75	1[illegible]															
49		16455	3[illegible]	14301	2[illegible]	1509	3[illegible]							4050	8843			Stock 10/30/31
50														31765	68906			Cost of Goods Sold
51		- 348		- 777		- 87								- 1146				
52																		
53																		
54																		
55																		
56																		
57																		
58																		
59																		
60																		

WEEK NO. 43

PROFIT & LOSS SUMMARY—For week ending Oct 30 1921

SALES	$7567.18	
Less Allowances	67.29	7499.89
COST OF GOODS SOLD	$6890.06	
Less Allowances	29.06	6851.—
GROSS EARNINGS FROM SALES		648.89
EXPENSES		729.64
NET PROFITS for the week		80.75
LOSS		670.55
TOTAL PROFITS to date		589.80

(Note: LOSSES are shown in RED)

ANALYSIS OF EXPENSES—

Salaries Officers (or Partners)	
Salaries Office	60.—
Salaries Salesmen and Weighmasters	
Salaries Labor	311.—
Salaries Selection	130.—
Total Salaries and Wages	
Weighmasters' and Other Employees' Expenses	
Buying and Other Car Expenses	15.50
Feed	7.68
Cups, Cartage, Drayage and Expressage	1.50
Automobile and Stable Expense	19.50
Bags, Paper and Twine	
Market Supplies (Troughs, Sprinkler, Gasoline, etc.)	14.79
Advertising and Subscriptions	
Entertainment and Promotion	
Telegrams and Telephone	
Traveling Expenses	
Inspection and Dues	
Rent	
Insurance	
Light, Heat and Water	39.95
Taxes	1.—
Legal and Collection Expense	1.—
Auditing	15.—
Stationery, Printing and Postage	
Ordinary Repairs	
Dirt Removal	2.—
Bad Charges	
Commissions	
Interest and Discount	
Depreciation (Reserve for)	
Taxes (except Income Taxes and Water Bills)	
Mortgage Interest	
Real Estate Taxes	
Charity and Donations	
Bad Debts Written Off	
Miscellaneous (use as little as possible)	
TOTAL EXPENSES	729.64

(NOTE. — Should any of the above expenses represent INCOME instead of EXPENSE, then show the amount in RED)

Keep also a Payroll Analysis

BALANCES

(Open Accounts Not Sold This Week)

BILL No.	NAME	AMOUNT

1222

Combined Statement and Trial Balance—For Week Ending Nov. 6 · 1931

Name of Market Morris Gershtein Week No. 44

(NOTE—For prices see other side)

BILL No.	NAME	FOWLS Lbs.	FOWLS Amount	CHICKENS Lbs.	CHICKENS Amount	DUCKS Lbs.	DUCKS Amount	ROOSTERS Lbs.	ROOSTERS Amount	GEESE Lbs.	GEESE Amount	TURKEYS SUNDRIES Lbs.	TURKEYS SUNDRIES Amount	TOTAL Lbs.	TOTAL Amount	TRIAL BALANCE Dr.	TRIAL BALANCE Cr.	ACCOUNT

WEEK NO. 44

PROFIT & LOSS SUMMARY—For week ending Nov 6 31

SALES	600 93	
Less:—Allowances	50 IV	1959.31
COST OF GOODS SOLD		
Less:—Allowances		1567.38
GROSS EARNINGS FROM SALES		654 03
EXPENSES		798 85
NET PROFITS for the week		114 82
SERIOUS PROFITS		689.80
TOTAL PROFITS to date		491.73

(Note:—LOSSES are shown in RED)

ANALYSIS OF EXPENSES—

Salaries—Officers (or Partners)	
Salaries—Office	60.-
Salaries—Salesmen and Weighmasters	
Salaries—Labor	308.-
Salaries—Subsidiaries	110.-
Total Salaries and Wages	
'Weighmasters' and Other Employees' Expenses	
Buying and Other Car Expenses	30.-
Feed	89.30
Crops, Cartage, Passage and Expressage	7.-
Automobile and Stable Expenses	98.90
Bags, Paper and Twine	
Market Supplies (Tonsights, Scratchers, Gauges, etc.)	18.35
Advertising and Subscriptions	
Entertainment and Promotion	
Telegrams and Telephone	
Traveling Expenses	
Inspection and Dues	
Rent	100.-
Insurance	
Light, Heat and Water	
Tips	
Legal and Collection Expense	
Auditing	
Stationery, Printing and Postage	
Ordinary Repairs	
Hot Removal	7.-
Bank Charges	
Commissions	
Interest and Discount	
Depreciation (Reserve for—)	
Taxes (except Income Taxes and Water Bills)	
Mortgage Interest	
Real Estate Taxes	
Charity and Donations	
Bad Debts Written Off	
Miscellaneous (use as little as possible)	
TOTAL EXPENSES	798.05

Keep also a Payroll Analysis

(NOTE:— Should any of the above expenses represent INCOME instead of EXPENSE, show the amount in RED)

BALANCES

(Open Accounts Not Sold This Week)

BILL No.	NAME	AMOUNT

1224

Combined Statement and Trial Balance—For Week Ending NOV 13 1931 193

Name of Market MORRIS GERBER INC Week No. 45

(NOTE For recapitulation see other side)

BILL No.	NAME	FOWLS Lbs.	FOWLS Amount	CHICKENS Lbs.	CHICKENS Amount	DUCKS Lbs.	DUCKS Amount	ROOSTERS Lbs.	ROOSTERS Amount	GEESE Lbs.	GEESE Amount	TURKEYS SUNDRIES Lbs.	TURKEYS SUNDRIES Amount	TOTAL Lbs.	TOTAL Amount	TRIAL BALANCE Dr.	TRIAL BALANCE Cr.	ACCOUNT
		2241	378 08	4585	568 44	24	5 50			13	2 92			4863	954 74			
		7086	479 11	4149	466 31	15	3 31							4550	948 73			
		4604	1067 07	3045	699 03	768	166 78			340	60 80			8757	1993 68			
		7749	1759 44	3555	850 54	644	151 30			244	35 98			12193	2767 36			
		4509	854 35	1481	257 73	298	49 42			-	71			6087	1160 79			
		1381	243 91	484	85 56	149	24 32							2014	353 79			
				1944	310 74									1944	310 74			
				114	20 60									114	20 60			
		44864	8795 06	15185	3228 71	1936	400 63			565	98 99			62550	12523 39			TOTAL SALES
															1715 50			IN J COOP CO
		577	80 78											4052	8681 89			Total Sales
		1197	251 37											1774	334 15			NORRIS INC.
		606	78 78											606	78 78			INDEPENDENT P & Co. INC
						1006	181 08							1006	181 08			G & HAWK PACKING Co
		444	97 68	919	87 99													
		934	177 46	209	45 98													
		760	91 20	1915	254 40									4981	854 71			CHAS COLLINS & Co
		1029	133 77	1972	187 60													
		5345	681 63	971	70 62									5747	1073 62			WESTERN COMM Co INC
		911	187 20	1765	382 40	939	169 02											
		191	44 83	1944	310 74	181	27 15			465	69 75							
		1184	253 84	915	201 30													
		386	54 04	2418	386 88													
		2074	477 02	994	218 68													
		789	165 69	654	150 42													
		1769	442 96	2044	378 28													
		1168	245 28	679	144 67													
		1719	343 80	1316	263 74													
		890	195 80	768	168 96													
		268	50 40											44016	9397 97			COLLINS Co -
														36140	7718 31			
		1753	385 66	4557	891 74					133	29 61							
		1618	355 96	4490	931 00													
		1097	241 34	3795	759 50													
		397	87 34															
		4999	1099 78															
		21777	4791 94	17013	3680 42	2121	377 25			395	94 36			7269	1339 13			STOCK 11/7/31 -
		2227	490 94	349	87 25									43760	9732 44			
		377	83 94	2411	482 20													
		834	191 82	2168	386 64													
		97	21 16											2382	510 76			STOCK 11/13/31 -
		39541	8703 17	16285	2940 90	4126	777 43			598	92 36			44556	7732 68			Cost of Goods Sold
		- 683		- 1130		- 190				- 33				- 2036				

9·36
1225

WEEK NO. 45

PROFIT & LOSS SUMMARY—For week ending NOV 13 1931 19__

SALES	$8681.89	
Less—Allowances	62.51	8619.38
COST OF GOODS SOLD	$7732.68	7698.58
Less—Allowances	34.10	
GROSS EARNINGS FROM SALES	$	920.80
EXPENSES		888.56
PROFITS for the week	$	32.24
MINUS PROFITS		475.28
TOTAL PROFITS to date	$	501.02

(Note:—LOSSES are shown in RED)

ANALYSIS OF EXPENSES

Salaries—Officers (or Partners)		100.
Salaries—Office		60.
Salaries—Salesmen and Weighmasters		314.
Salaries—Labor		130.
Salaries—Scholarium		
Total Salaries and Wages	$	
Weighmasters' and Other Employers' Expenses		15.70
Buying and Other Car Expenses		86.16
Feed		
Cmpn, Cartage, Freight and Expressage		
Automobile and Stable Expense		
Bags, Paper and Twine		9.—
Market Supplies (Troughs, Sawdust, Gauges, etc.)		
Advertising and Subscriptions		
Entertainment and Promotion		
Telegrams and Telephone		
Traveling Expenses		
Inspection and Dues		
Rent		60.—
Insurance		
Light, Heat and Water		
Tips		
Legal and Collection Expense		
Auditing		15.—
Stationery, Printing and Postage		2.—
Ordinary Repairs		7.—
Dirt Removal		
Bank Charges		
Commissions		
Interest and Discount		
Depreciation (Reserve for)		
Taxes (except Income Taxes and Water Bills)		
Mortgage Interest		
Real Estate Taxes		
Charity and Donations		
d Debts Written Off		
Miscellaneous (use as little as possible)		888.56
TOTAL EXPENSES	$	

(NOTE. — Should any of the above expenses represent INCOME instead of EXPENSE, then show the amount in RED)

Keep also a Payroll Analysis

BALANCES
(Open Accounts Not Sold This Week)

BILL No.	NAME	AMOUNT
		$

1226

Combined Statement and Trial Balance—For Week Ending Nov 10 1931

Record Made Morris Barber Dept Week No. 46

NOTE For computations see other side

BILL No.	NAME	POULS lbs.	POULS Amount	CHICKENS lbs.	CHICKENS Amount	DUCKS lbs.	DUCKS Amount	ROOSTERS lbs.	ROOSTERS Amount	GEESE lbs.	GEESE Amount	TURKEYS HENS lbs.	TURKEYS HENS Amount	TOTAL lbs.	TOTAL Amount	TRIAL BALANCE Dr.	TRIAL BALANCE Cr.	ACCOUNT

WEEK NO. 46

PROFIT & LOSS STATEMENT—For week ending Nov 10 to 31

SALES	7756.89	
Less—Allowances	63.76	7693.13
COST OF GOODS SOLD	6567.03	
Less—Allowances	31.82	6697.21
GROSS EARNINGS FROM SALES		995.37
EXPENSES		855.37
PROFIT for the week		140.01
LOSS INCURRED		698.87
PROFIT to date		975.87

(Show LOSSES in red or brackets)

ANALYSIS OF EXPENSES—

Salaries—Hours for Personal	100	
Salaries—Office	80	
Salaries—Advisors and Telephonists		Employees
Salaries—Sales	526	Petrol
Salaries—Deductions	130	Products
Total Salaries and Wages		
Telephonists' and Other Employees' Expenses		
Buying and Other Car Expenses	15.—	
Fuel	95.28	
Cargo, Carriage, Postage and Expenses	3.—	
Automobile and Bank Expenses (Bank Expenses)	40.—	
Rags, Paper and Twine		
Motor Supplies (Oil, Tyres, Tubes, Grease, etc.)	13.28	
Advertising and Subscriptions		
Entertainment and Promotion		
Telegrams and Telephone	48.11	
Travelling Expenses		
Inspection and Rent		
Rent		
Insurance	20.—	
Light, Heat and Water	7.50	
Tax		
Legal and Collection Expenses		
Auditing		
Stationery, Printing and Postage		
Ordinary Repairs		
Bits Renewal		
Bank Charges		
Commissions		
Interest and Discount		
Depreciation (Reserve for ...)		
Taxes (except Income Taxes and Water Rate)		
Mortgage Interest		
Real Estate Taxes		
Charity and Donations		
Sales Tax Oil		
Miscellaneous (use as little as possible)		
TOTAL EXPENSES	551.37	

(NOTE: — Should any of the above expenses represent INCOME instead of EXPENSE, then show the amount in RED)

BALANCES
(Open Accounts Not Sold This Week)

BILL No.	NAME	AMOUNT

1228

Combined Statement and Trial Balance—For Week Ending Nov. 27. 1931

Name of Market: Morris Fisher Inc. Week No. 47

(NOTE—For recapitulation see other side)

BILL No.	NAME	POULS lbs.	POULS Amount	CHICKENS lbs.	CHICKENS Amount	DUCKS lbs.	DUCKS Amount	BOOSTERS lbs.	BOOSTERS Amount	GEESE lbs.	GEESE Amount	TURKEYS lbs.	TURKEYS Amount	TOTAL lbs.	TOTAL Amount	TRIAL BALANCE lbs.	TRIAL BALANCE Cts.	ACCOUNT
	Sales	19041	27109	26700	57825	35	63			792	1091			46116	91103			
		7968	11190	8938	16095	4187	9385			500	995	2955	6982	27731	50988			
		815	1144	1976	3101	738	1646			499	1116	977	2277	15327	34284			
		257	1636	986	1248	171	363			965	1772	669	1376	28945	58897			
		1965	4098	2097	3943	1212	2552			14	38	261	988	10009	25046			
		1236	1762	2536	4700	9	18							46736	101602			
		1909	3697	1915	2716									3824	6413			
				110	279	28	799			20	600	195	7796	353	9374			
		11116	21769	13119	30871	5918	15982			2976	5911	4913	10999	37866	81532			Total Sales
	Purchases					73	198	7		12	345	38	95	3069	7580			Morris Fisher Inc
		41	1282															
		1678	3460															
		1974	3776	49	1780	39	1246							1819	3738			Berkshire Poultry Co Inc
		998	2169															
						31	79					21	163	2596	7357			Morris Fisher Inc
		362	696	1996	3790	56	95			309	1130	233	815	791	1911			Hanover Poultry Co
				249	1296					101	285			3454	8519			Eckert & Lowe Inc
		93	1743									189	696	189	696			Morris Fisher Inc
		1096	1978															
		810	1490	1998	3996	117	187							11179	21871			Kosher Quality Co
														2775	5586			Eckert & Lowe Inc
		2833	5743	1999	3998	916	2674					14	514	15	514			Balance
		457	9462	1999	3977	1985	5665					1951	7281					
		853	1397	1458	6496	173	324					1990	4960					
		110	2750	399	1496													
		1997	4500	724	1745													
		2001	4062	1961	7736													
				1952	7576													
				2810	6470													
		1997	2085	1919	4736													
		1951	3867			3927	6031			6615	17466	4351	13715	37800	87831			Klein Goldman Co
		1574	3624	1995	4985					6615	17466			37800	87831			
		1773	3624	970	6490													
		1881	3624	1888	3120													
		1997

WEEK No. 47

FOREMAN & LEAD SERVANT—For week ending Nov. 27 1931

SALES	£9731.6½	
Less—Allowances	12.8½	£9668.73
COST OF GOODS SOLD	£8873.27	
Less—Allowances	78.86	£8794.41
GROSS EARNINGS FROM SALES		£874.32 (13% on sales)
EXPENSES		£901.65
NET PROFITS for the week		£27.33
PREVIOUS PROFITS		£201.47
TOTAL PROFITS to date		£228.80

(Note—LOSSES are shown in RED)

ANALYSIS OF EXPENSES—

Salaries—Others (or Payees)	£ 100.—	
Salaries—Office	60.—	
Salaries—Advances and Misdemeanors, Supervising	[illegible]	Employees Payroll Analysis
Salaries—Labor	332.—	
Salaries—Schedules	110.—	
Total Salaries and Wages	£	
Welfare and Other Employees' Expenses		
Poultry and Other Car Expenses	16.—	
Fuel	95.—	
Cleaning, Carriage, Postage and Expressage		
Automobile and Delivery Expenses	53.07	
Bags, Paper and Twine		
Market Supplies (Triangles, Baskets, Crates, etc.)	23.63	
Advertising and Subscriptions		
Entertainment and Hospitality		
Telegrams and Telephone		
Traveling Expenses		
Insurance and Rent		
Rent ?		
Insurance	30.—	
Light, Heat and Water		
Tips		
Legal and Collection Expenses		
Auditing	12.—	
Stationery, Printing and Postage		
Ordinary Repairs		
Big Renewals	14.—	
Bank Charges		
Commissions		
Interest and Discount		
Depreciation (Discount for—)		
Taxes (except Income Taxes and Water Bills)		
Mortgage Interest		
Real Estate Taxes		
Charity and Donations	5.—	
Bad Debts Written Off		
Miscellaneous (use as little as possible)		
TOTAL EXPENSES	£ 901.65	

(NOTE.—Should any of the above expenses represent INCOME instead of EXPENSE, then show the amount in RED).

BALANCES

(Open Accounts Not Sold This Week)

BILL No.	NAME	AMOUNT
		£

1230

Combined Statement and Trial Balance—For Week Ending SEP 1 1931 193

Name of Market Morris Market Stall

Week No. 36

(NOTE For recapitulation see other side)

SELL No.	NAME	POULS		CHICKENS		DUCKS		ROOSTERS		GEESE		TURKEYS TURKEYS		TOTAL		TRIAL BALANCE		ACCOUNT
		Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Lbs.	Amount	Dr.	Cr.	
	U. S. Dist. Court, S. D. of N. Y. Ex. 726 DEC 10 1931 Oct 6 cc 3 pages	1697	28840	1849	99471									3546	22976			
		1870	97853	1987	129705									3857	99287			
		2106	97376	1819	93191									3925	90511			
		971	39065	1967	85588									2938	124653			
		1197	46115	3339	205179	288	7209	1966	385					5254	259479			
		1765	85806	2015	99618	65	1691							3880	187115			
		2470	97381	2804	169450	28	717							5302	189457			
		1888	93401	1716	91067	57	1498							3661	96786			
		197	10023	70	1390									267	33925			
		100	30—	53	1744									153	31744			
		19953	944778	17619	837788	438	11375	1966	385					37976	1292944			Total Sales
		903	16756											903	16756			Weston Inc
				1057	16912									1057	16912			Independent Fish Co Inc
				4111	146493									4111	146493			R. J. Schwartz, Jersey Ave
				878	18498									878	18498			J. Schwartz Stall
				3085	97163									3389	97163			Manuel Fish Co Inc
				1660	33600									1660	33600			U.S. Market Court 2
		1223	39356	584	14600													
		970	76948															
		1081	19458											2311	71024			Chas. Collins Co
				926	16668													
		1954	93540															
		855	31920											3735	68388			Jos. Morris Inc
				2107	37896									2102	37836			Wayne Cannon & Co Inc
		873	19194											873	19194			J. Kosmo - Cashier
		1301	32500	699	18738	440	11000											
		1569	40580	879	18459	36	648											
		1801	91942															
		1585	72916											7465	176382			Chas Collins Co
		685	13760	453	9966													
		1293	25866	456	9130									2890	58706			Independent Fish Co Inc
		967	51440	2160	45360													
				3999	68880									5859	117180			J. Schwartz - Jersey Ave
		992	18846	68	1360													
		996	1880															
		2217	97548											9167	211008			Sol Fromtal Inc
		996	99560	1108	23268									34912	819269			
		992	49866	805	16100													
		1877	98558	737	15477													
		1990	21490															
		1589	10627															
		2681	56301															
		2511	47290	22031	441577	670	12543							6157	114946			Strauss Fish Co —
		2774	61508	2385	49153	200	4088							45076	934401			
		2999	64142	876	17510													
		999	19980		2985													
		1500	30—															
		2500	39980											6126	127965			Sold 9/4/31 —
		19953	944778	18762	376579	438	5960		46					39907	1292944			Cost of Goods Sold
		267		1148		38								1453				

Report No. 36

WEEKLY & TIMES STATEMENT—For week ending Sept 4 1937

SALES		5938 87	
Less Allowances		21 24	5917 63
COST OF GOODS SOLD		4655 03	
Less Allowances		41 24	7913 85
GROSS EARNINGS FROM SALES			1003 78
EXPENSES			1118 22
PROFITS for the week			160 44
TOTAL PROFITS			2408 16
nett PROFITS to date			2408 16

(Gross SALES as shown in BOOK)

ANALYSIS OF EXPENSES—

Salaries—Officers (or Partners)	200	
Salaries—Office	80	
Salaries—Managers and Telephonists		Branch
Salaries—Sales	350 38	Head
Salaries—Shop Girls	176	Outside
Total Salaries and Wages		
Welfare and Other Employees' Expenses		
Hiring and Other Car Expenses	15 67	
Rent	104 70	
Coupon Postage and Expenses		
Assessments and Public Imposts	137 38	
Wages, Paper and Twine		
Motor Supplies (Petrol, Tractors, Grease, etc.)	15 35	
Advertising and Subscriptions		
Entertainment and Promotion		
Telegrams and Telephone		
Travelling Expenses		
Inspection and Fees		
Bad	100	
Insurance		
Light, Heat and Water		
Tax	1	
Legal and Collection Expenses		
Auditing	12	
Redemption, Printing and Postage		
Delivery Expenses		
Hire Discount	7	
Bank Charges		
Commissions		
Interest and Discount		
Depreciation (Reserve Fund)		
Taxes (except Income Taxes and Water Rate)		
Mortgage Interest		
Real Estate Taxes		
Charity and Donations	1	
Other Values Old		
Miscellaneous (not to include a profit)		
TOTAL EXPENSES	1118 22	

(NOTE: — Should any of the above expenses represent PROFIT (instead of EXPENSE), then show the amount in RED).

BALANCES
(Open Accounts Not Sold This Week)

BILLS	NAME	AMOUNT
		£

Combined Statement and Trial Balance—For Week Ending SEP 11 1931 19[illegible]

Name of Broker MORRIS GERBER INC

Week No. 37

BILL No.	✓	NAME	POOLS		CHICKENS		DUCKS		ROOSTERS		GEESE		TURKEYS DRESSED		TOTAL		TRIAL BALANCE		ACCOUNT
			No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	No.	Amount	Dr.	Cr.	

WEEK NO. 37

PROFIT & LOSS SUMMARY—For week ending Sept 11 to 21

SALES	14077.06	
Less:– Allowances	271.71	14057.35
COST OF GOODS SOLD	12769.40	
Less:– Allowances	172.87	12596.53
GROSS EARNINGS FROM SALES		1460.82 (10.4% on Sales)
EXPENSES		1310.25
NET PROFITS for the week		150.57
TOTAL PROFITS		3317.69
ADD PROFITS to date		7767.89

(Note:– LOSSES are shown in RED)

ANALYSIS OF EXPENSES—

Salaries—Others (or Partners)	700.–	
Salaries—Office	70.–	
Salaries—Scalesmen and Weighmasters		Keep these Separate
Salaries—Labor	419.18	Payroll Analysis
Salaries—Schedules	122.–	
Total Salaries and Wages		
Weighmasters' and Other Employers' Expenses		
Buying and Other Car expenses	18.–	
Feed	217.91	
Crates, Cartage, Freezage and Expressage	12.–	
Automobile and Stable Expense	44.60	
Bags, Paper and Twine		
Market Supplies (Towels, Smokes, Grease, etc.)	10.63	
Advertising and Subscriptions		
Entertainment and Promotion		
Telegrams and Telephone	44.07	
Traveling Expenses		
Inspection and Bins		
Rent		
Insurance	50.–	
Light, Heat and Water		
Tips		
Legal and Collection Expense		
Auditing		
Stationery, Printing and Postage		
Ordinary Repairs		
Hot Removal	7.–	
Bank Charges		
Commission		
Interest and Discount	870.–	
Depreciation (Records for)		
Taxes (except Income Taxes and Water Bills)		
Mortgage Interest		
Real Estate Taxes		
Charity and Donations		
Odds Written Off		
Miscellaneous (use as little as possible)		
TOTAL EXPENSES	1310.25	

(NOTE: – Should any of the above expenses represent INCOME instead of EXPENSE, then show the amount in RED).

BALANCES
(Open Accounts Not Sold This Week)

BILL No.	NAME	AMOUNT

DEFENDANTS' EXHIBIT "S"

935 ~~1234~~

18

CHARACTER OF BUSINESS

BUTCHER POULTRY DEALER

TERMS OF CREDIT
PAYMENT USUALLY MADE

DAY OF WEEK
PAYMENT BY

CHECK
WHO SIGNS CHECKS

CASH

REMARKS:

BANK

JUDGMENTS

FAILURES

REBATES

Defts Ex. S

	ADDRESS	TEL.	A CRED. O.K.	B SLOW PAY	C CRED. LIM.	D CASH ONLY		PART.	CORP.
[illegible]	848 E. 157 Street	No. 5 4168							

EXHIBIT "W"

CHELSEA LIVE POULTRY CO., Inc.

COMMISSION MERCHANTS - - LIVE POULTRY

39-41-43 LOEW AVE., 44-46-48 BLOOMFIELD AVE.

Telephones { 4229 Watkins / 4147 Watkins

WEST WASHINGTON MARKET

New York, 9/14 1931

M Gross J Stanley

		FOWLS	CHICKENS	ROOSTERS
1	X	Red fls		
2	9	71 80 191		
3	9	220 77 143		
4		491 (334)	Rock fls	
5	(2)	157	9	
6			7 71 82 189	
7		Red fls		
8	9	71 20 51		UCKS
9	7	71 80 191		
10		542 (242)		
11			Ex. 247	
12		306		
13			Ex 52-30	
14				GEESE
15				
16				
17				
18				
19				
20				

1 & above any Express Prem mentioned

Received in good condition Poultry as listed above.

Signed

16 B 6959

THE POTTER PRESS BOSTON 11442

EXHIBIT "X"

937
1236

PHONE, WATKINS 9-4339
9-4447

CHELSEA LIVE POULTRY CO., INC.

COMMISSION MERCHANTS

LIVE POULTRY EXCLUSIVELY

44-48 BLOOMFIELD STREET
[illegible] LOEW AVENUE
WEST WASHINGTON MARKET

No. 3765

NEW YORK 9/19 193

SOLD TO Gross & Stunberg

ALL BILLS DUE AND PAYABLE MONDAY FOLLOWING DATE OF SALE

334 Red Jr	31	103	54		
147 Red Jr	31	75	02		
189 Rock Jr	31	58	59		
765				237	15
				1[illegible]	15
				1948	10

Ex. X

17

If this bill is incorrect Buyer must notify us within four days of date hereof. Unless we

EXHIBIT "Y"

PHONE CHELSEA 3000 — Nathan S. Garlick

MICHAEL GARLICK & SON

Commission Merchants in

LIVE POULTRY 8170

7-8-9 THIRTEENTH AVE. — 65-67 GRACE AVE.

WEST WASHINGTON MARKET

New York, 9/17 1931

Sold to Gross + Stemberg

967 Longfellow Ave

Bx NY

Lgt	18	1944	fe 31	757	09
	19	1743	fe 13	685	89
		3685		1044	98

Ex. Y

MICHAEL GARLICK — NATHAN S. GARLICK

MICHAEL GARLICK & SON

7-8-9 Thirteenth Avenue

WEST WASHINGTON MARKET

Telephone Chelsea

Commission Merchants in

LIVE POULTRY

65-67 Grace Avenue

New York, 9/18 193 1

M Gross + Stemberg

No.	Poultry	lb.	Chickens	lb.	Roosters	lb.
1	Cl 87	6				
2	311	94	217			
3	371	96	275			
4	253	61	192			
5	277	80	197			
6	275	81	194			
7	253	88	165			
8	287	85	202		Ducks	
9	264	60	204			
10	277	83	194			
11	276	78	198			
12	274	78	196			
13	289	91	198			
14	37				Geese	
15						
16					Turkeys	
17						
18						
19						
20	3744					

Received in good condition Poultry as listed above.

Signed

No 3283

MICHAEL GARLICK — NATHAN S. GARLICK

MICHAEL GARLICK & SON

7-8-9 Thirteenth Avenue

WEST WASHINGTON MARKET

Telephone Chelsea

Commission Merchants in

LIVE POULTRY

65-67 Grace Avenue

New York, 9/19 193 1

M Gross + Stemberg

No.	Poultry	lb.	Chickens	lb.	Roosters	lb.
1	C 250	77	173			
2	280	77	203			
3	285	85	200			
4	260	76	184			
5	291	86	205			
6						
7	246	88	158			
8	30		30		Ducks	
9			(145)			
10	1754					
11	48					
12			(334)			
13						
14					Geese	
15						
16					Turkeys	
17						
18						

Received in good condition Poultry as listed above.

Signed

No 3351

[fol. 1238] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO CERTAIN EXHIBITS, ETC.

It is hereby stipulated and agreed by and between the parties hereto as follows:

1. That paragraphs numbered "1" to "22" inclusive, comprising the whole of the first count of the indictment mentioned and referred to in the course of the trial of this action and market Exhibit 5, contain the identical charges and allegations contained in the first 22 paragraphs of the amended petition filed in this action, so far as the appellants are concerned, except that appellant Joe Rosenman was not named in said indictment, which was returned by the Grand Jury on January 17th, 1929.

2. That Exhibit 8 is a document showing that the witness Sam Davis joined the New Jersey Local of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America and paid certain dues to that organization in the latter part of 1927.

3. That the charges contained in Exhibit 22, being the information filed on August 20th, 1928 in the United States District Court for the Southern District of New York, and [fol. 1239] the defendants named therein are substantially the same as those named in the said indictment and in the said amended petition.

4. That the members listed on Exhibits 26, 27, 28, 29, 30, 32 and 33 are all located in the five boroughs of the City of New York.

It is further stipulated and agreed that no action was taken by the Court at the conclusion of the hearings before Honorable John C. Knox, United States District Judge for the Southern District of New York, which said hearings are covered by Exhibit A, except as appears in said Exhibit A and the statement of evidence.

It is further stipulated and agreed that Exhibit 23 as printed in this record contains a list of the defendants convicted under the aforesaid indictment, returned January 17, 1929, together with the sentences imposed, after trial, on December 16, 1929.

It is further stipulated and agreed that Exhibit Q as printed is the form of application signed by all the members of the Bronx Poultry Dealers Mutual Protective Association.

It is further stipulated and agreed that the printing of Exhibit 7, being the record on appeal in the Circuit Court of Appeals for the Second Circuit, in the cause entitled "United States of America against Greater New York Live Poultry Chamber of Commerce, et al.", shall be dispensed with, and that a copy thereof, now on filed in the office of the clerk of the Supreme Court of the United States, may be used and referred to upon the argument of the appeal before the Supreme Court of the United States.

It is further stipulated and agreed that this stipulation shall be considered and made part of the statement of evi-
[fol. 1240] dence to be embodied in the record on appeal in this cause.

Dated New York, January 25, 1933.

George Z. Medalie, United States Attorney. Samuel H. Kaufman, Attorneys for Defendants. Nathan D. Perlman, Attorney for Defendant Rosenman.

[fol. 1241] IN UNITED STATES DISTRICT COURT

In Equity. No. 52-30

[Title omitted]

STIPULATION AS TO STATEMENT OF EVIDENCE

It is hereby stipulated and agreed that the foregoing, including the exhibits and stipulations, is a true and correct statement of the evidence introduced upon the trial of this cause in said United States District Court, stated in narrative and condensed form, except such portions thereof as are stated by question and answer, which are hereby agreed to be necessary for review upon the appeal; that all formalities regarding the preparation, presentation and approval of said statement of evidence are hereby waived; and it is hereby agreed that the said statement of evidence may be included in the record upon appeal of said cause to the Supreme Court of the United States and that Honorable Francis G. Caffey, the District Judge who tried

said cause, may settle and approve the said statement of evidence with the consent and approval hereby given by both the Petitioner and appealing defendants without further notice.

Dated January 26, 1933.

George Z. Medalie, United States Attorney, Solicitor for Petitioner. Samuel H. Kaufman, Solicitor for All Defendants Except Rosenman. Nathan D. Perlman, Solicitor for Defendant Rosenman.

[fol. 1242] IN UNITED STATES DISTRICT COURT

In Equity. No. 52-30

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is hereby stipulated by and between counsel for the respective parties hereto that the record on appeal shall contain all of the matters enumerated in the stipulation of January 26th, 1933, and in addition, the testimony indicated in the attached letter of February 23, 1933, from Walter L. Rice to Samuel H. Kaufman, such additional testimony to be inserted at the places indicated in said letter; the printing of the stipulation is hereby waived.

Dated February 27, 1933.

George Z. Medalie, per W. L. R., United States Attorney, Solicitor for Petitioner. Samuel H. Kaufman, Solicitor for Defendants Except Rosenmann. Nathan D. Perlman, Solicitor for Defendant Rosenmann.

[fol. 1243] February 23, 1933.

Samuel H. Kaufman, Esq., c/o Kaufman and Weitzner, 60 Wall Street, New York, N. Y.

Re United States v. Greater New York Live Poultry Chamber of Commerce et al.

DEAR MR. KAUFMAN: We are enclosing herewith the statement of points which you forwarded for signature.

We should like the following omissions inserted in the statement of evidence:

(1) In the testimony of Bernklau (pages 2059-2060 of the official transcript of record), insert after, "I know Louis Lipkin, the bookkeeper in Morris Gerber's Market. I talked to him after September 19th, when the price was increased to 8¢ or 10¢ a pound," the following:

"Mr. Kroppy: I object to that testimony regarding conversations between this man and the working men in the place it is not binding on the defendants.

"The Court: I can't tell yet; it doesn't appear to be competent."

(2) In the testimony of Bernklau (pages 2063-2064 of the official transcript of record), after, "He said 'We get it just the same,'" the following:

"He said that meant all the marketmen are to go—are together."

(3) In the testimony of Goldstein (pages 229-230 of the official transcript of record), insert after, "We made the association when Salthe came in," the following:

"Q. What did he say?

"A. If I am not mistaken——

"Mr. Kaufman: I think this is purely hearsay.

"Mr. Rice: Sokoloff is a defendant.

[fol. 1244] "The Court: It does not make any difference whether he is a defendant or not. It is a question of whether he is a co-conspirator. You put in declarations of a person not a party who is a co-conspirator, and the prosecuting officer is always indicting under the conspiracy section. They do not have to do that if you familiarize yourself with the rules of evidence. You will know that the declaration of a co-conspirator in furtherance of a conspiracy is competent evidence, and if it should turn out here that the evidence is insufficient to establish a conspiracy participated in by the declarant, or the declaration was not made in the course of or in furtherance of the conspiracy I might have to discard it, but I will have to take it up. You cannot do it at once. I am going to hear you gentlemen sum up your case before the end. Proceed."

(4) In the testimony of Platzik (pages 214-215 of defendants' proof, official transcript of record), insert after, "No one tells me the prices at which I should sell poultry or to whom I should sell or not sell;" the following:

"Cross-examination.

"By Mr. Rice:

"I have been sitting in court here during all of this testimony this afternoon and have heard the testimony of all of the other witnesses.

"Mr. Rice: If your Honor please, may I ask that all witnesses be kept out of the court-room prior to the time that they testify?

"The Court: That request should have been made at the opening of the case because it should be equally applicable to the two sides.

"Mr. Kaufman: I have no objection, your Honor, to excluding the witnesses at all.

"The Court: All of them go out, all those that have not testified go out."

(5) In the testimony of Rosenberg (pages 221-222, of defendants' proof, official transcript of record), insert after, "I have not heard of price fixing among the poultry market men or dividing up customers, or of collecting one cent a pound," the following:

"Redirect examination.

"By Mr. Kaufman:

"Q. When you say that Harry Herbert was not convicted, do you mean that he did not go to jail? Do you know whether he paid a fine?

"A. He didn't go to jail, I don't know what—to answer [fol. 1245] you I don't know.

"Q. Do you know what convicted means?

"A. Yes, sir.

"Q. Do you understand what convicted means?

"A. Sure.

"Q. Do you know what found guilty means?

"A. Yes. I know what the jury did with respect to Harry Herbert.

"By the Court:

"Q. What?

"By Mr. Kaufman:

"Q. What did they do?
"A. They didn't find him guilty, not guilty.

"By the Court:

"Q. That is what he said?

"By Mr. Kaufman:

"Q. You say the jury didn't find him guilty?

"The Court: Keep your eyes away from back there (indicating to the end of the court-room).

"A. He was found guilty. He did not go to jail and was not fined."

(6) In the testimony of Siegel (pages 238-239 of defendants' proof, official transcript of record), insert after, "No one interferes with my selling to any butcher, or tells me to whom I should sell or not sell, or the prices I should charge for poultry," the following:

"Cross-examination.

"By Mr. Rice:

"Q. Mr. Siegel, did you say that none of your partners were parties to this suit?
"A. No, sir.
"Q. None of them are defendants here?
"A. No, sir.
"Q. Isn't Harry Rubin a defendant in this case?

"The Court: Don't look away.

"By the Court: Is he a defendant in this case?

"By Mr. Rice:

"Q. Yes?
"A. Not that I know of.

[fol. 1246] "Q. Don't you know that he is a defendant in this case?

"Mr. Kaufman: If your Honor please——
"The Court: Leave the witness alone."

[fol. 1247] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER SETTLING STATEMENT OF EVIDENCE

It appearing that the United States Attorney and the Attorneys for the appealing defendants have agreed that the foregoing statement of evidence including the exhibits may be settled and approved without further notice, and it appearing that said statement is true, correct and properly prepared, and that it contains all of the evidence relevant and material to a review of the questions to be presented on the appeal in said action,

It is, therefore,

Ordered that the same be and hereby is allowed, settled and approved as a true and correct statement of the evidence adduced at the trial of this cause and may be filed in the Clerk's office and become a part of the record.

Dated February 28, 1933.

Francis G. Caffey, United States District Judge.

[fol. 1248] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY AND PARTS OF RECORD WHICH APPELLANTS THINK NECESSARY FOR THE CONSIDERATION THEREOF PURSUANT TO RULE 13, PARAGRAPH 9, OF THE RULES OF THE SUPREME COURT—Filed March 2, 1933

The appellants, and each of them, by their solicitors, state that they intend to rely on all the points set out in their assignment of errors herein and that the entire transcript of the records, as certified to this Court by the Clerk of the United States District Court for the Southern District of New York, is necessary for the consideration

thereof. The printed record herein should consist of the entire record, as certified to the Court, excepting exhibit 7, which, pursuant to stipulation dated Jan. 25, 1933, need not be printed.

Dated ——— —, ———.

Samuel H. Kaufman, Nathan D. Perlman, Solicitors for Appellants.

To Hon. Charles Elmore Cropley, Clerk of the Supreme Court of the United States, and Hon. Thomas D. Thacher, Solicitor General of the United States of America, Solicitor for Appellee, Department of Justice, Washington, D. C.

[fols. 1249 & 1250] The United States of America, appellee, by its Solicitor General, hereby states that there are no additional parts of the record which appellee thinks material to the consideration of this appeal and hereby consents to a hearing thereof on the parts above designated by the appellants.

Dated Washington, D. C., ——— —, 1933.

T. D. Thacher, Solicitor General.

To Hon. Charles Elmore Cropley, Clerk of the Supreme Court of the United States.

[fol. 1251] [File endorsement omitted.]

Endorsed on cover: File No. 37,444. S. New York D. C. U. S. Term No. 747. Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, Carl Firestone, Charles Gershowitz, et al., appellants, vs. The United States of America. Filed March 2, 1933. File No. 37,444.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1932.

No. 747

LOCAL 167 OF THE INTERNATIONAL BROTHERHOOD OF CHAUFFEURS, TEAMSTERS, STABLEMEN, AND HELPERS OF AMERICA, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

STATEMENT AS TO JURISDICTION.

The United States of America instituted the instant proceeding, allegedly pursuant to the provisions of

§ 4 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" (26 Stat. 209; U. S. C. A. Title 15, § 4), commonly known as the Sherman Anti-Trust Act, to restrain the defendants from violating §§ 1 and 2 of said Act of Congress, providing, respectively:

> "§ 1. *Trusts, etc., in restraint of trade illegal; penalty.*—Every contract, combination in the form of trust or otherwise or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is declared to be illegal."

> "§ 2. *Monopolizing trade a misdemeanor; penalty.*—Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor * * *."

On February 6, 1932, after a trial before the Honorable Francis G. Caffey, District Judge, in the District Court of the United States for the Southern District of New York, a final decree was issued restraining the defendants from engaging in certain specified acts. On April 5, 1932, a petition for leave to appeal to the United States Supreme Court, from the said decree, was presented by the appellants herein.

In a proceeding such as the instant one, an appeal from a final decree lies directly to the United States Supreme Court.

The Expediting Act of February 11, 1903 (32 Stat. 823; Title 15, U. S. C. A. § 29), provides as follows:

> "*Appeals to Supreme Court.*—In every suit in equity brought in any district court of the United States under any of the laws mentioned in the preceding section, wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court, and must be taken within sixty days from the entry thereof." (Feb. 11, 1903, c. 544, Sec. 2, 32 Stat. 823; Mar. 3, 1911, c. 231, Sec. 291, 36 Stat. 1167.)

The "preceding section", referred to in the said statute, mentions §§ 1 to 7 of Title 15, U. S. C. A., and provides in part as follows:

> "*Suits against monopolies expedited.*—In any suit in equity brought in any district court of the United States under §§ 1 to 7, inclusive, of Title 15 of this chapter or any other statutory provision having a like purpose enacted after February 11, 1903, or that may be enacted wherein the United States is complainant * * *." (Title 15, U. S. C. A. § 28.)

The instant proceeding, as above noted, being one under §§ 1 to 7, it follows that this cause is within the provisions of §§ 28 and 29 of Title 15, U. S. C. A., and consequently appealable to the United States Supreme Court.

See too:

U. S. v. *California Co-operative Canneries*, 279 U. S. 553, 558.

SAMUEL H. KAUFMAN,
Solicitor for Appellants, Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, Carl Firestone, Charles Gershowitz, Morris Markman, Abe Newman, Official Orthodox Poultry Slaughterers of America, Inc., Harry Schoner, Charles Herbert, Harry Herbert, David Kaufman, Max Keslin, Samuel Silverman, Joseph Weiner, Aaron Weissler, and Arthur Herbert.

NATHAN D. PERLMAN,
Solicitor for Appellant Joseph Roseman.

Dated March 16, 1933.

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Supreme Court of the United States

OCTOBER TERM, 1933.

No. 6.

LOCAL 167 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN & HELPERS OF AMERICA, CARL FIRESTONE, CHARLES GERSHOWITZ, *et al.*,

Appellants,

—against—

THE UNITED STATES OF AMERICA.

BRIEF FOR APPELLANTS.

Statement.

This action was commenced in the District Court of the United States, for the Southern District of New York, on February 7, 1930,* to enjoin the defendants from engaging, in violation of §§ 1 and 2 of the Sherman Act [Act of July 2, 1890], in a conspiracy in restraint of interstate trade and commerce in live and freshly slaughtered poultry (R. 1).

This appeal is taken from the decree rendered in favor of the petitioner, after a trial before Hon. Francis G. Caffey, District Judge (R. 75-81, 84-87).

The appellants are two unions and fourteen individuals (R. 84-87). All of the individual appellants are members of one or the other of said unions. The appellant Rosen-

* An amended petition was filed April 16, 1930 (R. 1).

man is secretary of the appellant Official Orthodox Poultry Slaughterers of America, Inc. (hereinafter referred to as the "Shochtim Union"), and the appellants Weiner and Charles Herbert are delegates of the said union (R. 23). The appellants Arthur Herbert and Schomer are delegates of the appellant Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America (hereinafter referred to as "Local 167") (R. 23).

Jurisdiction.

The decree was filed on February 6, 1932 (R. 75).

The petition for leave to appeal to this Court was presented to the District Court on March 31, 1932 (R. 86-87), and was allowed on April 5, 1932 (R. 84-85).

The following statutory provisions sustain the jurisdiction:

The Expediting Act of February 11, 1903 (32 Stat. 823; Title 15, U. S. C. A., §29), provides as follows:

> "*Appeals to Supreme Court.*—In every suit in equity brought in any district court of the United States under any of the laws mentioned in the preceding section, wherein the United States is complainant, an appeal from the final decree of the district court will lie only to the Supreme Court, and must be taken within sixty days from the entry thereof." (Feb. 11, 1903, c. 544, Sec. 2, 32 Stat. 823; Mar. 3, 1911, c. 231, Sec. 291, 36 Stat. 1167.)

The "preceding section", referred to in the said statute, mentions §§ 1 to 7 of Title 15, U. S. C. A., and provides in part as follows:

> "*Suits against monopolies expedited.*—In any suit in equity brought in any district court of the

United States under §§ 1 to 7, inclusive, of Title 15 of this chapter or any other statutory provision having a like purpose enacted after February 11, 1903, or that may be enacted wherein the United States is complainant * * *." (Title 15, U. S. C. A., §28.)

The instant cause, as above noted, is one within §§ 1 to 7, Title 15, U. S. C. A.

The following case sustains the jurisdiction:

U. S. v. California Co-operative Canneries, 279 U. S. 553, 558.

On April 24, 1933, this Court ordered that probable jurisdiction herein was noted.

Opinions of the Courts Below.

The opinion of Judge Caffey, rendered at the close of the trial may be found in the record (R. 48-75). It is not reported elsewhere.

Opinions, upon interlocutory motions made herein, are reported in 53 F. (2d) 518; 53 F. (2d) 518; 44 F. (2d) 393.

The facts alleged in paragraphs numbered "1" to "22" of the amended petition were the basis of the first count of an indictment returned by the Grand Jury of the Southern District of New York on January 17, 1929 (R. 939). The allegations contained in the said paragraphs of the amended petition are identical with those of the first count of the said indictment, except that appellant Rosenman was not named in the said indictment (R. 939). The defendants named in the indictment were brought to trial before Hon. John C. Knox, District Judge, and a jury on October 7, 1929 (Ex. 7, p. 36). The indicted appellants, other than

the appellant Weiner, were found guilty under the first count thereof. A verdict of not guilty was directed as to the appellant Weiner (Exhibit 7, p. 2).

The record on appeal from the judgments of conviction in the criminal trial was admitted in evidence on the trial below "not as proof in this case even against" the convicted defendants, "but merely as to the Government's contention * * * to supplement the judgment roll by way of identification or elaboration of the issues that were involved in that case" (R. 754). The said record on appeal is Petitioner's Exhibit 7 herein (R. 754).

Appeals from the judgment of conviction were taken to the Circuit Court of Appeals for the Second Circuit on behalf of a number of the convicted defendants, not including the appellants herein (Ex. 7, pp. 3-5). That Court affirmed, 47 F. (2d) 156. This Court denied certiorari, 283 U. S. 837.

The following citations refer to opinions written upon various interlocutory motions made in connection with the said indictment: 30 F. (2d) 939; 34 F. (2d), 967; 33 F. (2d) 1005.

Scope of the Review.

This being an equity appeal, the facts as well as the law are open to review.

Hughes, Federal Practice, §5639;
Virginian Ry. v. *U. S.*, 272 U. S. 658, 675;
La Abra Mining Co. v. *U. S.*, 175 U. S. 423, 464.

The Amended Petition.

The material allegations of the amended petition (R. 1-22) may be summarized as follows:

1. *Description of interstate commerce in live poultry* (R. 2):

Live poultry is shipped from states other than New York and New Jersey, by persons known to the trade as "shippers", into New York and New Jersey, to persons known as "commission merchants" or "receivers", who in turn sell the poultry "as agents" for the shippers. Receivers in the State of New York sell the poultry received by them, to persons known as "marketmen", doing business in New York and New Jersey, and receivers in the State of New Jersey sell the poultry to marketmen of both New Jersey and New York.

Marketmen doing business in New York sell and ship the poultry, after slaughtering the same, in some instances directly to consumers, and in other instances to butchers and persons known as "poultry dealers", who do business in New York, and in some instances, in New Jersey. Marketmen in New Jersey sell and ship poultry to consumers, and to poultry dealers and butchers both in New Jersey and New York.

Substantially all of the poultry is sold and delivered within twenty-four hours after its arrival in the metropolitan area, passing through the channels above described without substantial delay.

2. *Description of defendants* (R. 5):

The Greater New York Live Poultry Chamber of Commerce is a voluntary association, whose membership comprises a large majority of the marketmen doing business within the City of New York. Commencing on or about May 9, 1927, and until October 1, 1928, one Benjamin Simon was supervisor of the said association.

Local 167 is a voluntary association, whose membership comprises virtually all persons engaged as employees in the handling, crating and trucking of the poultry after its arrival in New York City.

The Official Orthodox Poultry Slaughterers of America,

Inc., is a corporation. Its members are shochtim (singular: shochet), *i. e.*, persons who alone are competent under Jewish dietary laws to slaughter poultry. A majority of the consumers of poultry are persons of the Jewish orthodox faith, who require that poultry be slaughtered according to the ritual prescribed by such dietary laws.

3. *Conspiracy* (R. 10):

Beginning on May 9, 1927, the defendants engaged in a conspiracy to restrain interstate trade and commerce.

It was part of the conspiracy to allot to the marketmen-conspirators, particular butchers and poultry dealers, and to compel all butchers and poultry dealers in the City of New York to purchase poultry solely from the marketmen to whom they were allotted.

It was further part of the conspiracy to prevent butchers and poultry dealers from purchasing or selling poultry, as the case might be, at prices lower than those dictated by the conspirators, and to restrain marketmen from selling below prices agreed upon by the conspirators.

In order to carry out the objects of the conspiracy, various means were employed, including threats of violence, assaulting and beating persons, detaining and destroying vehicles engaged in carrying poultry, preventing and obstructing deliveries, instigating the refusal of Local 167 and its members to load, unload and handle poultry, refusing to deal with or sell poultry to certain persons, making levies for defraying the expenses of the conspirators, instigating the refusals of the Shochtim Union and its members to slaughter poultry, following and spying upon various persons, and employing gangsters.

4. *Threat of continuing conspiracy* (R. 16):

On August 20, 1928, an information was filed against sixty-eight defendants, being substantially the same defend-

ants named in the amended petition. The conspirators thereafter temporarily desisted from most of the acts above described, intending, however, to resume these acts as soon as they should deem it safe so to do, and never, in fact, abandoning said conspiracy.

The Chamber of Commerce, Local 167 and the Shochtim Union have been employed as essential instrumentalities of the conspiracy; they are still in existence and have not been abandoned by the conspirators, who, for the most part, still control all the important offices in said organizations and occupy strategic positions in the trade.

Within the past twenty years, the conspirators and their business predecessors have engaged in a series of similar conspiracies, which have been continuous except for temporary cessations inspired by governmental and private investigations.

Since August 20, 1928, the defendants have committed many of the overt acts above described, and which constituted an essential part of the conspiracy for which 68 defendants were convicted.

The amended petition ends with a prayer for a perpetual injunction against the defendants (R. 20).

The Answers to the Amended Petition.

1.

The answers of the appellants to the amended petition, as originally filed, in substance denied the allegations set forth therein relating to a conspiracy and monopoly in restraint of trade; denied the allegations therein set forth charging them with the commission of the overt acts alleged as the means by which the conspiracy was carried on; and denied the alleged continuance of the conspiracy or an intent to resume the same (R. 22-25).

2.

Upon motion of the petitioner, the answers of those of appellants who were convicted in the criminal prosecution above referred to, insofar as the same contained denials of the first 23 paragraphs of the amended petition, were stricken out as "sham denials made for obstructive purposes only" (R. 25-32).

The General Course of Commerce in Live Poultry.

The allegations of the amended petition as to the course of commerce were not proved *in toto*. The following statement presents the facts.

Poultry is gathered in the West by so-called "concentrators" (R. 359), who sell it to persons known as "shippers" (R. 359). The shippers sell and consign the poultry by carload freight to "receivers" or "commission men" in New York (R. 359). The latter sell it to wholesalers known as "marketmen" or "slaughterhouse men", who dispose of the poultry to "poultry dealers" or butchers, for ultimate distribution to the consumer (R. 361).

Approximately 90% of the poultry consumed in the Metropolitan area is sent in by freight (R. 361). The remainder is trucked in by local trucks or express. Of this balance, all but ten per cent. comes from without New York State (R. 361, 372).

The "freight" poultry arrives at five railway terminals: the New York Central in Manhattan; the Lackawanna at Hoboken, New Jersey; the Baltimore & Ohio at Jersey City, New Jersey; the New Jersey Central at Communipaw, New Jersey; and the Erie at Weehawken, New Jersey (R. 359). About half of the traffic is borne by the New York Central, and the balance by the New Jersey terminals (R. 361, 373).

After inspection at the terminals, the cars are unloaded

and the poultry is put into wooden coops or crates (R. 360). A part of the poultry is then loaded on the waiting trucks of marketmen, and the remainder trucked to the receivers' stands in West Washington Market in Manhattan (R. 360, 373, 379). Of the poultry arriving by freight, a total of 62½% is disposed of to marketmen in New York. The balance is loaded on the trucks of marketmen at the New Jersey terminals. Of this balance, "the majority" is trucked into New York by the marketmen, and the remainder distributed to points in New Jersey (R. 365, 373, 379).

The trucking to Washington Market is done by the New York Live Poultry Trucking Co., which is employed by the railways for that purpose. The poultry, being all consigned to New York (R. 370, 373), including that portion which arrives at the New Jersey terminals, the railways undertake to deliver it to West Washington Market (R. 364, 365). Freight, cartage and ferriage, are all paid by the shipper (R. 364, 365, 375, 376).

Shipment is generally made under a straight bill of lading; the shipper attaches a draft drawn for the approximate selling price of the poultry, as thereafter fixed, which draft upon presentation is usually paid by the receiver before he gets the poultry (R. 363, 366).

The price of the poultry is undetermined when it is shipped. The price becomes fixed on the day of unloading (R. 362, 366, 367). The price is the market price on that day (R. 362, 366, 367). The receiver pays the price as thus determined, less freight, cartage, ferriage, coopage, and a commission of from three to five per cent (R. 363). About twenty per cent. of the poultry, however, is so-called "purchase poultry". It differs from the "commission poultry" in that the price is determined prior to shipment, instead of on the date of unloading (R. 368).

Although the receivers receive a "commission", they are in fact purchasers of the poultry (R. 367). Title to the poultry, for all practical purposes, passes to them immedi-

ately upon the unloading (R. 369). From that time they have full dominion; they bear all losses and derive all gains in the value of the product (R. 363, 364, 367). The shipper, once the poultry is unloaded on his order, loses all control over it (R. 366). From that time, the receiver may do as he pleases with the poultry; he is responsible to the shipper only for the price (R. 368). The receiver chooses the purchasers, extends credit at his own risk, fixes his selling price (R. 365, 367). In short, the unloading is the "line of demarcation" (R. 377).

The shippers have no contact with the marketman (R. 366); the shippers deal solely with the twenty receivers in New York (R. 369). They consign and bill their poultry to "simply New York" (R. 362, 370, 373).

The New York Live Poultry Trucking Co. employs members of Local 560 of the International Brotherhood of Trucksters, Teamsters, etc., with offices in Jersey City. Members of Local 167 are employed by receivers only in New York, at Washington Market, to unload the incoming poultry and to load for marketmen (R. 360). No members of the Shochtim Union are employed by the receivers; they work for marketmen, who sell only slaughtered poultry (R. 361-364).

Statement of the Facts.

(1) The Greater New York Live Poultry Chamber of Commerce was organized during the year 1926 (R. 634). Its members were marketmen doing business in New York. Maintenance was sustained by a system of assessments upon members of 10c. upon each coop of poultry sold by each. The coops being rented to the marketmen, they were entitled to a refund of 35c. on each coop returned to the owners in good condition. By agreement of the parties, the owners refunded only 25c. to the marketmen and paid the remaining 10c. directly to the Chamber of Commerce in behalf of the particular marketmen (R. 157, 158).

During 1926, and for a while in 1927, one Major L'Esperance, was its "supervisor" (R. 163). During his incumbency as supervisor, there was frequently discussed with Major L'Esperance, the matter of the formation of a credit information bureau (R. 163). Credit was for long a deepseated evil of the industry (R. 337). Nothing was done about the matter, however, and Major L'Esperance resigned in April of 1927 (R. 163, 164, 634, 638).

The members of the Chamber of Commerce, feeling that a supervisor was necessary, called upon Albert Ottinger, then Attorney General of New York (R. 152). He recommended to them one Benjamin Simon, a deputy attorney general, as being a person well acquainted with the industry (R. 153). After a conference with Simon, he was engaged by the Board of Directors of the Chamber of Commerce at a salary of $300 per week (R. 153).

(2) Shortly thereafter it was proposed at a meeting of the directors, that a fund be raised for the purposes (a) of establishing a credit-information bureau, (b) of fighting the unions, and (c) of building a central terminal so that all poultry would arrive in New York (R. 153, 635). The

money was to be raised by a tax of one cent per pound on every pound of poultry sold by the members of the Chamber of Commerce (R. 153, 635).

The city was divided into districts (R. 153, 635). In charge of each district was a director of the Chamber of Commerce (R. 153, 635). Meetings were held in each district, at which the proposal was explained to the marketmen (R. 139, 251, 386, 637).

Between the time of the first meeting of directors and the various district meetings, other features appear to have been added to the plan, however. At the sectional meetings there was discussed in addition to the original plan (R. 149, 150, 153, 206, 335, 351, 386, 388, 393, 543, 544), the allotment of particular retailers to particular marketmen and the elimination of wholesale dealing by the smaller dealers (R. 140, 141, 142, 251, 253, 295-297, 386, 393, 538, 633, 636). Some testimony appears in the record, to the effect that uniform prices dictated by a central office, were to be charged (R. 179); but it stands uncorroborated, and, in fact, contradicted (R. 206, 251, 396).

Credit losses seem to have been the underlying reason for the plan of allocation of customers.* It was thought that "it was necessary, in order to keep track of a butcher's credit, that he deal at one certain place" (R. 244).

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* The method by which the marketmen were defrauded was graphically explained by one witness as follows (R. 149-150): "These butchers were supposed to settle their bills with the marketmen about once a week. Very frequently these butchers would fail to settle with their marketmen and go to another marketman. And that created great loss in the business for the marketmen, as high as $1,500 to $2,000 to a customer. I will tell you about the butchers: One butcher came into me this week and kill by me $500 poultry a week. The following week he is supposed to come and bring me a check for this $500. If he don't bring me the check I wouldn't give him any more poultry; but the following week he did not come into me, and did not bring the check. He went away to second market and killed $500 poultry over there. His second marketman didn't know he owes me the money, and the third week the butcher went to a third market and took $500 poultry, and finally, when he owed $1,500, the marketmen had no money and no customers."

It was thought, too, that the plan would avoid ruinous "overstocking" (R. 544).*

Underlying the plan of eliminating by purchase wholesale dealing by smaller dealers, was eradication of wasteful business methods and ruinous price cutting (R. 140, 141). The smaller dealers could not handle their wholesale trade profitably; the larger dealers were equipped to deal with it profitably (R. 545, 636). Furthermore, a small dealer who could not afford to employ a union man, came into conflict with union regulations requiring all who did wholesale business, no matter how little, to engage at least one union man (R. 494).

(3) In the course of the sectional meetings, various retailers were allocated to particular marketmen (R. 295, 300); a number of smaller marketmen were promised weekly sums to induce them to turn over their wholesale business to the bigger dealers (R. 142). "Collectors" were appointed for the various districts, to collect the moneys assessed against the marketmen (R. 152, 153).

(4) However well adapted these plans were for eradicating the evils of the industry, they were never more than partially carried out.

Retailers refused to purchase from the marketmen to whom they were allocated (R. 214, 235); marketmen sold

* Describing "overstocking", the witness Danziger stated (R. 544): "I recall the term 'overstocking' being used, carrying too much stock. That was talked about at those meetings. The marketmen would buy stock sufficient for their regular trade and in addition buy extra stock. I guess we all do it. That is what is known as run around trade. Run around trade is mostly bad money. People that really could not get credit in one place would run around all over for goods, and when we had stock left over, we would sell it to them. We would sometimes sell them the stock we ought to use for our regular customers. That very often turned out to be a bad debt. At this meeting it was mentioned that the people should not carry this extra stock because of its hurting the trade and resulting in bad debts. That is an old disease. It sometimes happened that we would carry stock for this run around trade and then they would not come in and buy it and we would have it on our hands; and when we had to carry poultry like that, we had to take a loss on it. It would shrink and lose weight. Some of it would die. When it dies a natural death we cannot sell it, we have to throw it away. That was one of the evils that we were discussing in these meetings of this organization."

to butchers allotted to fellow marketmen (R. 241, 291, 301). Disputes arose between marketmen and collectors representing the Chamber of Commerce, as to payment of the weekly assessments (R. 142, 291, 335).

(5) In an effort to force collections, and to enforce the scheme of allocation, the marketmen resorted to violence and other alleged unlawful means.

Retailers who did not observe the scheme of allotment were spied upon, assaulted, threatened with violence, and prevented from buying at places other than those to which they were assigned (R. 214, 215). In like fashion, non-complying marketmen were assaulted and threatened with violence (R. 326).

It is difficult to ascertain from the record the exact part played by the Shochtim Union and Local 167 in the situation. Undoubtedly, the unions, cooperating with each other, did attempt to bring non-conforming marketmen into line with the decrees of the Chamber of Commerce. In a few isolated instances, the unsuccessful efforts of non-conforming marketmen to obtain poultry can be attributed to the unions. Upon the pretext that particular non-conforming marketmen were not complying with union regulations, strikes were called, and there were refusals to load or to slaughter (R. 328, 335). In nearly all instances, however, the actions of the unions were the result of legitimate disputes with marketmen over the working hours, wages and employment of union men (R. 243, 244, 245-248, 255, 292, 295, 327, 328, 352, 387, 409, 531, 547, 548, 550, 579, 580).

(6) The attempts of the marketmen to enforce collection of the assessments, and to compel conformance to the system of allocation, ceased prior to the Fall of 1928. The cessation was voluntary; the result of a realization of the futility of the plan (R. 147). Witness after witness testified to the fact of complete normalcy in the business after August, 1928 (R. 138, 139, 149, 151, 169, 229, 233, 234, 240, 241,

245, 271, 276, 278, 295, 328, 339, 346, 357, 381, 383, 385, 388, 396, 447, 463, 499, 506, 580, 633, 645).

There were many disputes between the unions and particular marketmen, subsequent to August, 1928. But each, in so far as the unions were concerned, was a bona fide labor controversy totally unconnected with any general scheme or plan whatsoever (R. 246-248, 409, 419, 434, 438, 441-444, 472, 482-484, 486, 628-631, 646-651).

(7) By evidence concerning these disputes, by evidence regarding the organization of various associations of marketmen and retailers after the Summer of 1928, by testimony concerning a local controversy between marketmen and commission merchants in Newark, New Jersey, and by testimony regarding a rise in the price of poultry in parts of New York in September, 1931, the petitioner sought to sustain its contention that the conspiracy for which a number of the defendants were convicted in 1929, was in existence at the time of the filing of the petition. The contrary being a basic contention of the appellants, it is our purpose to develop the evidence concerning each of these matters in detail hereunder, and to demonstrate not merely that there was a cessation of the practices for which the defendants were convicted, but that there is no dangerous probability of a resumption thereof.

The Statutes Involved.

Petitioner bases its right to a decree upon §§1, 2 and 4 of the Act of July 2, 1890 (26 Stat. 209), which read as follows:

> "§1. *Trusts, etc., in restraint of trade illegal; penalty.* Every contract, combination, in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every

person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. (July 2, 1890, c. 647, §1, 26 Stat. 209.)"

"§2. *Monopolizing trade a misdemeanor; penalty.* Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. (July 2, 1890, c. 647, §2, 26 Stat. 209.)"

"§4. *Jurisdiction of courts; duty of district attorneys; procedure.* The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of Sections 1 to 7, inclusive, or Section 15 of this chapter; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. (July 2, 1890, c. 647, §4, 26 Stat. 209; Mar. 3, 1911, c. 231, §291, 36 Stat. 1167.)"

Summary of Arguments; Specification of Assignments of Error.

I.

THERE IS NO PROOF THAT DEFENDANTS INTENDED TO RESTRAIN, OR IN FACT INTERFERED WITH INTERSTATE COMMERCE. THE EVIDENCE AT MOST SHOWED A LOCAL CONSPIRACY IN RESTRAINT OF INTRASTATE COMMERCE, OVER WHICH THE FEDERAL COURTS HAVE NO JURISDICTION (ASSIGNMENTS OF ERROR I, V, VIII, XII, XIII).

II.

ASSUMING THAT THE DEFENDANTS WERE GUILTY OF A CONSPIRACY IN RESTRAINT OF INTERSTATE COMMERCE, THE PROOF SHOWS THAT THE SAME WAS VOLUNTARILY ABANDONED LONG PRIOR TO THE FILING OF THE PETITION HEREIN. NOR IS THERE A DANGEROUS PROBABILITY OF A RESUMPTION THEREOF (ASSIGNMENTS OF ERROR IV, V, VIII, XII, XV).

III.

IN ANY EVENT, THE PETITIONER DID NOT SUSTAIN ITS BURDEN AS AGAINST THE DEFENDANTS WEINER, ROSENMAN AND MARKMAN. THERE WAS NO CREDIBLE EVIDENCE CONNECTING THEM WITH THE ALLEGED CONSPIRACY. THE DECREE SHOULD BE REVERSED AS AGAINST THESE DEFENDANTS (ASSIGNMENTS OF ERROR IV, V, VIII).

IV.

THE COURT BELOW COMMITTED REVERSIBLE ERROR IN STRIKING OUT AS SHAM, PORTIONS OF THE ANSWERS OF THE DEFENDANTS CONVICTED IN THE CRIMINAL PROSECUTION (ASSIGNMENTS OF ERROR IX).

V.

IN ANY EVENT, THE DECREE SHOULD BE MODIFIED BY ELIMINATING PARAGRAPH "8 (1)" THEREFROM, AND BY LIMITING THE SWEEP OF THE INJUNCTION TO CONDUCT TENDING TO THE RESTRAINT OF INTERSTATE COMMERCE (ASSIGNMENTS OF ERROR IV, V, VIII).

FIRST POINT.

There is no proof that defendants intended to restrain, or actually interfered with interstate commerce. The evidence, at most, showed a local conspiracy in restraint of intrastate commerce, over which the federal courts have no jurisdiction.

A.

As the basis for the injunction, petitioner sought to prove (1) that the defendants conspired to, and in fact, restrained interstate commerce by interfering with the usual course of trade, as alleged in the petition; and (2) that they conspired to, and actually interfered with particular transactions in interstate commerce, which were not in the usual course of trade.

B.

*There Was No Interference With the Usual Course of Interstate Trade and Commerce.**

The operation of the Sherman Act, by its express terms, is limited to restraints upon interstate commerce (§§ 1, 2). "The statute has no application to a restraint of intrastate commerce, nor to a conspiracy in relation thereto" (Thornton's, Combinations in Restraint of trade, 359). Over restraints of purely intrastate trade, the Federal courts have no jurisdiction.

Hopkins v. *U. S.*, 171 U. S. 578;
Anderson v. *U. S.*, 171 U. S. 604;
Addyston Pipe & Steel Co. v. *U. S.*, 175 U. S. 211;
U. S. v. *E. C. Knight Co.*, 156 U. S. 1.

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*Alleged interference with that portion of the traffic which arrives at the New Jersey terminals and is borne by particular marketmen to their slaughterhouses in New York, is dealt with under "F", *post*.

C.

There is no claim that the defendants interfered with trade between shippers and receivers. Their alleged unlawful activities were restricted to transactions between receivers and marketmen, on the one hand, and marketmen and retailers on the other hand (R. 10-20). The jurisdiction of the court to enjoin defendants, insofar as it is based upon their alleged interference with the usual course of trade, consequently rests upon a determination that poultry remains in interstate commerce until the sale by the receiver to the marketman.

It is appellants' contention, on the contrary, that interstate commerce ceases with the receipt of the poultry in New York by the receiver; that the subsequent transactions from receiver down to consumer, constitute no part of interstate commerce; that in consequence, appellants' alleged interference was beyond the purview of the Sherman Act, and without the jurisdiction of the District Court.

D.

The line of demarcation between interstate commerce and intrastate commerce is often difficult to determine. There are, however, some well established principles which are of aid in making a determination. The application of these principles to the evidence herein, leads to the conclusion that interstate commerce in poultry ceases with delivery to the receiver in the usual course.

1. Interstate transportation, having commenced, continues until the arrival of the goods at the *intended* destination. It ceases with delivery to the consignee in the usual course of business. Sales thereafter are intrastate matters.

Industrial Assn. v. *U. S.*, 268 U. S. 64;

Adams Express Co. v. *Kentucky*, 214 U. S. 218;
Rhodes v. *Iowa*, 170 U. S. 412;
Atlantic Coast Line v. *Standard Oil Co.*, 275 U. S. 257;
Wagner v. *Covington*, 251 U. S. 95;
Robins v. *Shelby Co. Tax District*, 120 U. S. 489;
Gavit, The Commerce Clause (1932) p. 112.

That the *intended* destination is the receiver's stand in West Washington Market is clear:

(a) The product is *consigned* to the receiver (R. 359, 374).

(b) The goods are shipped under a straight bill of lading (R. 362, 374), with *draft* attached, *drawn* on the receiver (R. 362).

(c) *Freight* is paid by the shipper to the receiver's place of business (R. 363, 364, 365, 370, 375, 376); cartage to the marketman's place of business is borne by the marketman (R. 379).

(d) The shipper has *contact* with the receiver exclusively; he has no dealings with the marketman (R. 365); sales to the marketman are made by the receiver alone (R. 365, 367, 376).

(e) The shipments to the receiver are *actual sales* (R. 367). After unloading, all gains and losses are borne by the receiver (R. 363, 367, 368, 369, 375, 376); "* * * the unloading becomes the line of demarcation" (R. 377). After unloading the shipper maintains no *control* over the poultry whatsoever (R. 365, 367); complete *dominion* is vested in the receiver; he is responsible to the shipper for nothing but the price (R. 368).

(f) *Sales* by the receiver to the marketman are in all cases made *after* the arrival of the poultry, and not before (R. 364, 372, 379-380).

(g) If poultry can be said to come to *rest* in the State at all, it does so when it reaches the hands of the receiver. Owing to its perishable nature, it is not warehoused upon its arrival; receivers, marketmen and retail dealers pass it along as rapidly as possible to the consumer. At the receiver's stand in West Washington Market, it is *intermingled* with other goods, so as to become indistinguishable from these other goods, and is thus sold (R. 366). Not only is the poultry received from without the State confused with other goods, but it is often carried by the receivers for periods up to two weeks (R. 366, 370). Receivers regularly carry over 100 to 150 coops every night (R. 370).

2. It is often said that the determination of the question when interstate commerce ceases and intrastate commerce begins is a practical matter. It is a question of fact to be "tested by the actual transaction" (*W. U. T. Co.* v. *Speight*, 254 U. S. 17, 18). It is a "practical conception" (*Rearick* v. *Penn.* 203 U. S. 507, 512).

See, too:

Swift & Co. v. *U. S.*, 196 U. S. 375, 398.

The proof is clear that, as a practical matter, interstate commerce in poultry ceases with its receipt by the receiver.

The outline summary set forth above makes it apparent. A complete reading of the testimony of petitioner's witnesses, Frankel and Hawk (R. 359-380), the only witnesses who testified on this subject, only elaborates the essential facts above set forth; their testimony leads necessarily to

the conclusion that the traffic in poultry loses its interstate character after delivery to the receiver, as a practical matter. What happens to the poultry after receipt by the receiver, is "the result of new and independent arrangements" (*Industrial Ass'n. v. U. S.*, 268 U. S. 64, 71).

E.

The petitioner tried this case, and drafted the amended petition, upon the theory that the shipment of poultry from the farmer in the West to the ultimate consumer in New York City, is *one continuous act of interstate commerce.* The petition itself contains a paragraph entitled "Continuity of Interstate Commerce", reciting that the poultry passes "from the shipper to the receiver, marketmen, poultry dealers and butchers to the ultimate consumers continuously and without substantial delay" (R. 4).

Continuity of movement cannot, as contended by petitioner, be made determinative here.

There is no basis for differentiating sales by receiver to marketman, from marketman to retailer, or retailer to consumer. All are made within the State; all are made within a short period after the arrival of the poultry. In consequence, logical application of petitioner's theory necessarily leads to the conclusion not merely that the sale by the receiver to the marketman is part of interstate commerce, but that the transactions between marketman and retailer, and retailer and consumer also constitute trade and commerce among the several States!

The absurdity of such a determination is well illustrated by a statement of this Court in *New York ex rel. Penn. Ry. Co. v. Knight,* 192 U. S. 21, where it was said, at page 28:

> "If a cab which carries passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the

> traveler's trunk from his room to the carriage also engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply hay and grain for the horses, also engaged in interstate commerce, and where will the limit be placed? We are of the opinion that the cab service is an independent local service preliminary or subsequent to any interstate transportation."

Where should the line of demarcation be drawn? The sale by the receiver to the marketman? By the marketman to the retailer? Or the retailer to the consumer? The petitioner chooses to draw the line at the time of the purchase by the marketman, upon the theory that the shipment from the shipper to the receiver to the marketman, is a continuous, unwavering, movement. But does not the same reasoning apply to the marketman himself, and to the retailer? Each performs the same function as the receiver, viz: to hold the poultry only long enough to pass it on to the ultimate consumer.

As a practical matter, the "ultimate destination" of the poultry is the consumer; but petitioner is reluctant to follow its theory to its logical conclusion, and stops midway, at the sale to the marketman. We submit that there is certainly no logical or practical reason for calling a halt at this point.

The practical consequences arising from the interpretation contended for by the petitioner are manifest. The course of interstate commerce is unduly extended and gives federal control over transactions which, in their nature, are essentially local. Logical application of petitioner's theory would place retail grocerymen and distributors under federal control, to the exclusion of the States. Sales of such commodities as poultry, groceries and vegetables are essentially local in their nature, and the manner of

distribution of such articles solely within the State where consumption is effective, should not be under federal supervision.

* * * * * * * * * * *

The decision of the Circuit Court of Appeals (47 F. (2d) 156), on the appeal in the criminal action against the defendants herein, is based primarily upon three authorities:

> *Swift & Co.* v. *U. S.*, 196 U. S. 375;
> *Stafford* v. *Wallace*, 258 U. S. 495;
> *People's Gas Co.* v. *Public Service Commission*, 270 U. S. 550.

In the *Swift* and *Stafford* cases, it was held that the stockyards to which the livestock was consigned and delivered, was not a final destination, but a "throat through which the current flows", and the sale there made was only "an incident which does not stop the flow but merely charges the private interest in the subject of the current without interfering with its continuity". The determinative factors in those cases appear in the statement from the *Stafford* case, at page 516:

> "The origin of the live stock is in the West; its ultimate destination, known to, and intended, by all engaged in the business, is in the Middle West and East either as meat products or stock for feeding and fattening. This is the definite and well-understood course of business. *The stockyards and the sales are necessary factors in the middle of this current of commerce.*" (Italics ours.)

The *Swift* case and the *Stafford* case are thus clearly distinguishable from the case at bar. The transaction by the dealers in Chicago was one *in the middle of the flow of interstate commerce.* In the regular and accepted course

of business, all parties involved intended that the cattle would resume its journey to other states as soon as it passed through the hands of the packers.

In the case at bar, on the other hand, when the poultry reached the receiver in New York, it reached its final resting place so far as interstate traffic, as a fact, was concerned; it was never again precipitated into the flow of trade among the states. It was, in the usual course of events, used *exclusively* for domestic consumption within the State of New York. It was not intended for or shipped without the State; it reached the point of ultimate destination when it was delivered to the receiver.

The fact, as pointed out by the Circuit Court of Appeals, that Mr. Justice Sutherland, in distinguishing these cases in his opinion in *Industrial Association* v. *U. S.* (268 U. S. 64) failed to mention these features, is of little significance. It is hardly sufficient to counteract the express language of those cases.

People's Natural Gas Co. v. *Public Service Commission*, 270 U. S. 550, is also clearly distinguishable from the instant situation. The product there involved, was shipped from without the state directly to the consumer. Its destination was the consumer, and interstate transportation necessarily continued until that point was reached. If, in the instant situation, the poultry was consigned and delivered by the shipper, not to the receiver, as is the case, but to the marketman, the case would be applicable.

Public Utilities Commission v. *Landon*, 249 U. S. 236, and *State of Mo.* v. *Kansas Gas Co.*, 265 U. S. 298 (both gas cases), emphasize this distinction. The situations presented by these cases are more analogous to the case at bar. In the *Kansas Gas Co.* case, it was said, at page 308:

"The business of supplying on demand, local con-

sumers, is a local business, even though the gas be brought from another state and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case, the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance."

Industrial Association v. *U. S.* (268 U. S. 64), was distinguished from the instant case, by the Circuit Court of Appeals upon the ground that the plaster (the product there involved), after being imported from without the State, was brought to rest in salesrooms and warehouses and commingled with local goods, whereas the poultry herein was not warehoused or commingled with local goods.

The evidence is, however, that while poultry was not warehoused it was often kept by receivers for as long as two weeks before being disposed of (R. 364). True it is that the goods, in the usual course, were disposed of in one day. But this was necessitated by the perishable nature of the poultry.

The query naturally suggests itself: Of what importance is the warehousing of the poultry, and of what importance is the perishable nature of the goods in determining what constitutes interstate commerce? Are we to have one rule applicable to live poultry and another to smoked ham—one rule with reference to fresh strawberries and another to canned peas?

In so far as commingling is concerned, it was expressly testified that the poultry of one shipper is intermingled with the poultry of other shippers (R. 366). Whether the poultry thus confused includes purely domestic poultry, does not appear from the testimony. It seems reasonable to infer, however, that foreign poultry is often confused with the domestic product on the stands of the receivers.

A reasonable inference also is that the incoming product is confused with poultry long at rest on the receivers' stands.

It is submitted, furthermore, that the Circuit Court of Appeals, in attempting to distinguish the *Industrial* case, has limited the holding of that case considerably. The decision therein has been interpreted more broadly to mean that dealings within the state of consumption, between local wholesalers and retailers, are properly local in character.

> *U. S.* v. *Southern California Wholesale Grocers Ass'n.* (D. C. S. D. Calif. 1925), 7 F. (2d) 944;
> 44 Harvard Law Review 868.

The case of *U. S.* v. *Live Poultry Dealers' Protective Ass'n.*, 4 F. (2d) 840, is fundamentally different from this case, in that the receivers there acted as agents of the shippers. For the same reason, *Binderup* v. *Pathe Exchange*, 263 U. S. 291, is inapplicable.

The recent case of *Federal Trade Commission* v. *Pacific State Paper Trade Association*, 273 U. S. 52, is in no way opposed to appellants' contentions. The sales in that case were made *prior* to the placing of the product in interstate commerce; in addition, the goods were in many instances shipped directly to the consumer. Here, on the other hand, the sale to the marketman is always *subsequent* to receipt by the shipper; the shipper never sells to the marketman (R. 364, 372, 379-380). The distinction is well recognized (Gavit, The Commerce Clause, §68).

F.

There Was No Restraint Upon Particular Transactions in Interstate Commerce, Without the Usual Course.

Testimony regarding alleged interferences with interstate purchases and sales, outside the regular course of

trade, was given by the witnesses Davis (R. 131), Steinberg (R. 178, 829), Harnett (R. 295), Edelstein (R. 324), Birnbaum (R. 350), Feld (R. 380), Hecht (R. 399), Goldman (R. 507), Bernklau (R. 552), Sandler (R. 563), Mornick (R. 569), and Finkelstein (R. 463).

Sam Davis, a New Jersey marketman, testified that he experienced difficulty in obtaining poultry at the New Jersey terminals and in West Washington Market, during several months of 1927 (R. 133). The reason was that the union men refused to load for him (R. 133). He was told to get a union book from the New Jersey local (R. 133, 137). When he obtained one, he was loaded (R. 138). He testified further that he was told by one John Conlin, delegate of the New Jersey union, not to sell to certain Coney Island, New York, butchers, and was warned that his health department permit would be taken away if he did not desist (R. 134). The request apparently was made in conjunction with a demand that the witness cease selling wholesale, since he employed no union men (R. 134). But whatever the reason, it affirmatively appears from the record that there was in fact no interference with Davis' sales to the Coney Island butchers (R. 552, 553).

Sam Bernklau, a Coney Island butcher, respecting his purchases without the State, testified merely that he dealt with Sam Davis of Jersey City from about November, 1927 to March, 1928; that he then ceased dealing with Davis, and began to purchase from Coney Island marketmen again; that "Sam Davis sold me as much as I wanted, he never refused and never told me he could not sell me" (R. 552, 553).

The extent of the alleged interferences with *Bennie Sandler*, a Coney Island butcher (R. 563), was merely this: that several times in 1927 and early 1928 he was followed when he went to New Jersey to buy poultry (R. 564-568). His purchases in New Jersey, however, were in no way restrained (R. 564-568).

Max Feld, a New York butcher (R. 380), testified that in September, 1927, he attempted to buy poultry in Englewood, New Jersey; that he was told that he could not get poultry there (R. 380, 381). The name of the market in Englewood, he did not know; nor did he identify the person who allegedly refused to sell to him (R. 380, 381).

Peter Birnbaum, a marketman, testified to alleged difficulty in obtaining poultry at the Lackawanna Railway, in New Jersey, for three or four days in 1927 (R. 350-352). His trouble was due solely to a dispute with the union (R. 351, 352, 353); his inability to get poultry was caused by refusal of the union men to load for him (R. 352). According to the Court below, the union's action in this regard was proper (R. 69).

Petitioner sought to infer from the testimony of *Harry Goldman*, that defendants were exercising a restraint upon trade between New Jersey marketmen and New York receivers. Goldman, a New Jersey marketman, stated that he went to buy poultry in West Washington Market in the spring of 1931; that while there he was asked by a person, one "Max", whether he sold poultry to a "Nochemson", and that if he did he would not be able to get "stuff" himself (R. 518, 519). Who "Max" was, or his relation to the defendants, the witness could not say; he had never heard the name of defendant Max Keslin (R. 519, 520).

Mack Harnett, a Brownsville marketman (R. 295), testified that he bought poultry without interference, in Baltimore, West Virginia, and Bridgeport (R. 308); that he bought in Philadelphia and on one trip back, noticed that he was being "trailed" by some of the defendants (R. 308); that he was unable to obtain poultry at the railway terminals in New Jersey in 1927 (R. 303). In view of the fact that he was engaged in a labor controversy at the time (R. 301, 305), it is difficult to determine whether this was due to an outright refusal to sell, alleged recalcitrance, or whether it was due to a refusal to load.

The witness *Barney Hecht* (R. 399, *et seq.*) testified to a number of alleged interferences with purchases in New Jersey; his testimony respecting alleged refusals to sell was not only contradicted by every person allegedly involved (R. 716, 742, 743, 744, 747, 748), but was disposed of by the trial court with the comment that "no considerable probative effect" could be given thereto (R. 68); and "* * * it is difficult to tell just what he did testify" (R. 436).

Samuel Edelstein, a Brooklyn marketman (R. 325) testified to being unable to get poultry at the Erie Terminal in New Jersey once in September, 1927 (R. 325, 327); the union men refused to load for him because of a dispute he was then engaged in with the union (R. 327, 328).

Aaron Steinberg, a Bronx marketman, testified to an inability to purchase poultry in Philadelphia in 1930 (R. 189). The cause was his failure to make the necessary deposit for the shipment (R. 870, 871). A shipment of crates to his market from New Jersey was recalled, not because of coercion exercised by defendants, but merely because of a feeling of sympathy on the part of the shipper with the unions (R. 844, 848, 849), who were then engaged in a dispute with the witness (R. 874, 876, 881, 883, 884).

The foregoing includes every instance, but two, of alleged interference with interstate trade, without the usual channels. Upon the basis of this testimony, as thus analyzed, and after giving full credence to the testimony of the witnesses Finkelstein and Mornick (R. 465, 570, 571), in the light of the fact that over two hundred car loads of poultry are sold and shipped into the New York market each week (R. 373), representing a value of about $50,000,000 per annum, it is submitted that the slight restraint exercised during the period of almost five years covered by the evidence, should be subjected to the rule *de minimis non curat lex* (*Industrial Ass'n v. U. S.*, 268 U. S. 64, 84).

SECOND POINT.

Assuming that the defendants were guilty of a conspiracy in restraint of interstate commerce, the proof shows that the same was voluntarily abandoned long prior to the filing of the petition herein. Nor is there a dangerous probability of a resumption thereof.

A.

In the absence of a "dangerous probability" of resumption, injunctive relief will not be granted where the evidence indicates the voluntary abandonment of a conspiracy or monopoly in restraint of interstate commerce, uninspired by fear of prosecution.

U. S. v. *U. S. Steel Corp.*, 251 U. S. 417, 446;
Industrial Assn. v. *U. S.*, 268 U. S. 64, 84;
Swift & Co. v. *U. S.*, 196 U. S. 375, 396;
U. S. v. *American Can Co.*, 230 Fed. 859;
U. S. v. *E. I. DuPont deNemours & Co.*, 188 Fed. 129.

Nor does the mere existence of the power to restrain or monopolize interstate commerce come within the purview of the Sherman Act. (*Cf. U. S.* v. *U. S. Steel Corp.*, 251 U. S. 417.)

B.

Cessation of Essential Elements of Alleged Conspiracy.

Voluntary abandonment of the alleged conspiracy can best be demonstrated by proof of the cessation of all of its alleged essential activities.

1. A vital element, according to petitioner, was the collection of weekly assessments (R. 15). Collections ceased in the Summer of 1928 (R. 149, 151, 197, 271).

2. An alleged outstanding element was the payment of weekly sums to particular marketmen in return for their wholesale trade (R. 16). These payments ceased, of necessity, when collections stopped (R. 151, 253, 271, 351, 545).

3. Another alleged element was the holding of sectional meetings to effectuate the allocation of customers and to fix prices. Sectional meetings were not held after August, 1928 (R. 149, 151, 169, 271, 328). Price fixing and allocation of retailers were also absent.

4. Threats and violence were allegedly employed to enforce the scheme of allotment. The proof is clear that subsequent to August, 1928, there were no interferences with purchases and sales (R. 138, 139, 141, 151, 169, 229, 233, 234 240, 241, 245, 271, 276, 278, 295, 328, 339, 346, 357, 381, 383, 385, 388, 396, 447, 463, 499, 506, 580, 633, 645).

C.

Incidents Subsequent to August, 1928.

It is true that subsequent to August, 1928, there were a number of controversies between the unions and various marketmen. In each instance, however, the cause of the difficulty was a *bona fide* labor dispute. Allocation of customers and price-fixing were in no way involved. The unions resorted to lawful means in each case to enforce their contentions. They did not order commission merchants not to sell to recalcitrant marketmen; they merely instructed their members not to handle poultry intended for such marketmen, a proper method of compelling compliance with union regulations (R. 69).

The chief complainant against the unions for their alleged interferences with purchases subsequent to August, 1928, was *Aaron Steinberg*, a Bronx marketman (R. 178, 829*).

All of the difficulties of the witness Steinberg occurred between February or March, 1930, and May or June of the same year (R. 185). They were admittedly solely due to a labor dispute (R. 838, 884, 885). The witness, determined to "beat" the unions, discharged all of his union help and attempted to run a non-union market (R. 838, 876, 879, 881). Thereafter, he was unable to get poultry at West Washington Market. He testified that the commission men refused to sell him, for fear of themselves being involved in disputes with the unions. Upon the hearings before Judge Knox, the commission men to whom these statements were attributed by Steinberg, were called as witnesses (R. 861, 863, 864, 866, 867, 872). Each emphatically denied that he refused to sell because of fear of the unions (R. 861, 862, 863-868, 873). The witness Steinberg's inability to get poultry at West Washington Market was attributed by them to various causes, viz.: his credit was bad (R. 864, 865, 867, 868); he attempted to buy after particular commission men were all sold out (R. 862, 864, 867); in some instances he did not even approach a house with a request to sell (R. 861, 866): the members of Local 167 would not load for him (R. 862, 873).

His inability to get poultry in Philadelphia was explained by the fact that he failed to make the necessary deposit for the shipment (R. 870, 871). The unions were in no way involved (R. 871).

His testimony concerning the shipment of poultry from Lincoln, Nebraska, through Roscoe Wood, was contradicted

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* Defendants' Exhibit A is the record of a hearing before Judge Knox, upon the complaint of the witness Steinberg, for an alleged violation of probation by the defendants convicted in the criminal case (R. 829 *et seq.*).

in every respect by a number of witnesses (R. 839-842, 846, 847, 890, 892).

His inability to get crates can be attributed only to a feeling of sympathy with the union cause on the part of the makers. They were in no way threatened by the unions (R. 844, 848, 849).

Of significance, is the fact that Judge Knox, upon the close of the hearing (of which Steinberg's testimony upon the trial herein, was merely a summary), refused to take any action against the defendants (R. 896). Of even greater significance, as obviously appears from the evidence, Steinberg's difficulties were totally unconnected with any conspiracy or combination attempting to fix prices or allocate customers. His difficulties arose from a *bona fide* labor dispute between himself, individually, and the unions.

Barney Hecht, a Brooklyn marketman, was another complainant against the unions (R. 399). Described by Judge Caffey as "scatterbrained" (R. 68), his testimony is so confused as to defy analysis (R. 436). His alleged misfortunes subsequent to August, 1928, were undoubtedly due to the sole fact that he refused to unionize his market (R. 409, 438). His inability to get poultry in West Washington Market during this period was due to one fact: the refusal of union men to load for him; concededly, no commission man refused to sell him, or expressed fear of union trouble if they did sell (R. 418, 419, 427). His purchases in Philadelphia were admittedly not interfered with (R. 421, 430, 435). The S. P. C. A. and motorcycle-policeman incidents in New Jersey, were in no way connected up with any of the defendants (R. 445). The alleged refusal of a Newark commission merchant to sell him, in September, 1931, was unequivocally denied (R. 716, 742-744, 747, 748). Of this witness, the Court below said: "* * * in many respects he so exaggerated, in many respects he

was so vague about dates, that I could attach no considerable probative effect to his testimony" (R. 68). "I have the dates so confused from the testimony of this witness that it is difficult to tell just what he did testify" (R. 436).

Max Cohen's inability to obtain poultry at West Washington Market, in October, 1931, was due exclusively to the fact that his credit was bad (R. 481, 482, 485, 739). The unions were in no way concerned in his difficulties. On the contrary, upon his plea, and in spite of an agreement between him and the unions to employ a specified number of union men, a number of laborers were voluntarily withdrawn by the unions (R. 482-486).

Jacob Miller, a Bronx retailer, testified to alleged threats of physical violence against him by Charles Herbert, delegate of the Shochtim Union, during Passover in 1931 (R. 617, 618). His testimony was denied by each of the persons allegedly involved in the incidents concerning which he testified (R. 664, 671, 672, 674). In his comments on the witness, Judge Caffey referred to him as "an explosive, extremely biased person" (R. 67).

Kalman Gordon's inability to get poultry after a dispute with the unions over the number of union men he should employ, was due solely to the fact that union men refused to load for him (R. 631). No threats were made by the unions; wholesalers did not refuse to sell (R. 631, 633). Prices or allocation of customers were in no way involved.

The difficulty experienced by *Alexander Perlman,* in December, 1929, in getting poultry at West Washington Market, cannot be attributed to the use by defendants of unlawful methods. The cause was a *bona fide* labor dispute (R. 646-650). Until it was settled by the parties, the union men rightfully refused to load for him (R. 69). Commis-

sion men never refused to sell to him (R. 651). He was never threatened with violence. Neither price fixing nor allocation of customers was in any way involved.

In the period subsequent to August, 1928, the unions were associated with alleged allocation of customers by the testimony of one witness, *Abraham Aaron*. He testified that during Thanksgiving of 1931, he attempted to buy poultry from the Majestic Live Poultry Market; that the proprietor (whose name he did not know), refused to sell to him, stating that if he sold to other than his regular butchers, the union would compel him to take on an additional man (R. 535, 536). Assuming the admissibility of these statements as proof of their truth (which we do not concede, in view of the absence of proof connecting the alleged speaker in any way with the alleged conspiracy), the same is entitled to little weight. Not only was the testimony of the witness totally uncorroborated, but the statements attributed to Sewald, owner of the Majestic Market, were categorically denied by him (R. 701-703). In addition, the testimony of the witness Aaron that he was absolutely refused poultry, is directly contradicted by the documentary evidence. Defendants' Exhibits N and O are sales tickets, of sales made by the Majestic Market to Aaron on November 26 and November 30, 1931 (R. 702, 906A, 906B). That his address rather than his name appears on one ticket, is due to the custom of marketmen to refer to butchers by their business addresses.

The testimony thus presented, includes every instance of alleged interferences in which the unions were in any way involved, subsequent to the Summer of 1928.

D.

Attempts at Organization.

The associations existing or organized after August, 1928, were referred to, on behalf of petitioner, as sinister

indications that the alleged conspiracy was completely alive, though under cover, dangerously threatening to burst forth in full bloom. It is our intention to show, on the contrary, that each attempt at organization was chiefly born of a need to eradicate the deepseated evil of the industry: credits.* Notwithstanding petitioner's efforts to infer the contrary, there is no evidence associating these organizations in any way with either of the unions.

In connection with the facts here presented concerning attempts at organization, it might be well to keep in mind the statement of this Court in *Cement Manufacturers Protective Assn.* v. *U. S.*, 268 U. S. 588, at page 604:

> "* * * we cannot regard the procuring and disseminating of information which tends to prevent the procuring of fraudulent contracts or to prevent the fraudulent securing of deliveries of merchandise on the pretense that the seller is bound to deliver it by his contract, as an unlawful restraint of trade.
>
> "In *Swift* v. *U. S.*, 196 U. S. 375, 395, this Court approved a decree which provided that defendants should not be restrained from 'establishing and maintaining rules for the giving of credit to dealers where such rules in good faith are calculated solely to protect the defendants against dishonest or irresponsible dealers.'"

1.

The *Greater New York Live Poultry Chamber of Commerce* apparently continued in existence until about January 1930. After the Summer of 1928, it seems to have been nothing but a skeleton. In testimony relating to this period, there are no references to it. Its sole function seems to have been the collection and disbursement of the moneys

* Credit losses suffered by marketmen were substantial. The following witnesses testified to losses for eleven months in 1931 as follows: Gerber, $4,000-$5,000 (R. 680); Scull, $7,000 (R. 692); Rosenblum, $3,000 (R. 697); Brookstein, $1,200-$1,600 (R. 699); Sewald, $1,200 (R. 703); Platzik, $1,500 (R. 706); Hoffman, $3,000 (R. 710); Steinberg, $12,000 (R. 718).

previously assigned to it by its members (R. 733, 734). The greater part of its disbursements appear to have been for legal counsel, apparently in connection with the criminal prosecution (R. 733, 734). To contend that the mere existence of the Chamber of Commerce evidenced the continuance of the alleged conspiracy is to ignore the facts.

2.

The *L. W. Credit Association* was an organization of East Side marketmen, formed after the indictment, and dissolved some time prior to the criminal trial in 1929. Testimony concerning the Association was given by two Government witnesses. The witness *Rosenfeld* testified that he was employed by the Association to check the amount of poultry sold in a particular market and to report the same to a central office (R. 458); that the plan of the Association was to require each member to pay 4c for each pound of poultry sold by him in excess of a specified amount, the money collected to be paid to members who sold below a specified poundage (R. 457, 458). The witness *Weidberg*, on the other hand, testified that the Association was purely a credit organization; that the sole purpose of the "watchers" was to report marketmen who failed to abide by the Association's rules regarding sales to retailers owing bills (R. 211, 212).

Giving full credence to the testimony thus adduced concerning the L. W. Credit Association, we fail to see its significance. Allocation of customers and price fixing, the essential elements of the alleged conspiracy, found no place in the plans of the organization.

In an attempt to associate the Association with allocation of retailers, petitioner introduced the witness *Kugler*. He testified of "hearing" of the L. W. Credit Association, from other "butchers" (R. 600, 602); that some time after its formation, he was refused poultry by one marketman

and told to return to his regular dealer (R. 601); that a third dealer, one Hoffman, stated that the defendant Weidberg, the alleged head of the Association, ordered him not to sell to the witness (R. 602). *Hoffman*, when called, categorically denied the statements attributed to him by Kugler, and further denied any attempts by Weidberg, or any one else, to dictate to whom he should sell (R. 709, 710). In any event, the evidence in no way indicates a connection between the refusal to sell Kugler and the L. W. Credit Association.

Certainly, the existence of the Association cannot be relied upon to support the contention that the alleged conspiracy, latent or patent, existed during 1929.

3.

Practically no reference is made in the record to the *Retail Poultry Dealers' Association*. It appears to have been composed mainly of retailers, with a small membership of marketmen (R. 170, 172, 178). The facts surrounding its organization, purposes and functions do not appear in the record.

4.

The record is similarly barren of testimony regarding the organization and purposes of the *Live Poultry Dealers Protective Association of New York and Vicinity*. The one fact which does appear is that its members executed assignments of 10c. per coop on coops rented to them by Bernstein & Sons, Inc., and that certain payments were made weekly from December, 1928 to September, 1931, apparently in accordance with the asignments (R. 797-801). How the money was expended, does not appear. The Association seems to have been absorbed by the Live Poultry Slaughterhouse Association (R. 477).

5.

The *Live Poultry Slaughterhouse Association* was organized in September, 1931, under the auspices of Charles H. Tuttle, former United States Attorney for the Southern District of New York, and George Mintzer, former Chief Assistant United States Attorney (R. 168). That the organization was created solely for the purpose of remedying the evils of the industry is clear (R. 477-479, 690-692). The Government's concession that the purposes of the Association were laudatory (R. 697) was unnecessary, in view of the testimony concerning the organization. The attempt of petitioner to associate the individual members with schemes to eliminate competitive bidding, allocate customers and fix prices, finds absolutely no support in the record (R. 166, 169, 667, 690, 691, 692, 694, 697). The effort to associate the unions with the organization, likewise proved abortive (R. 166-169, 667, 690, 691, 694, 697).

6.

The *Harlem & Bronx Poultry Board of Trade* was organized for the sole purpose of dispensing credit information (R. 664, 672, 674, 723-726, 907, 908, 935). Membership was entirely voluntary (R. 726). Petitioner attempted to show the contrary by evidence that Max Cohen, after withdrawing from the organization, was unable to get poultry. The proof is clear, however, that his difficulties were purely financial, totally unconnected with his withdrawal from the Board of Trade (R. 481, 482, 485, 726, 739).

To associate the Board of Trade with allocation of customers or price fixing, is to ignore the proof; a similar lack of connection between the Board of Trade and the unions exists, petitioner's efforts to infer the contrary notwithstanding.

E.

The Superior Live Poultry Market Incident.

The Superior Live Poultry Market incident, in Newark, New Jersey, was purely a local affair. Neither New York poultry dealers nor the unions were in any way involved (R. 717, 731, 732, 744-747). The attempt to link the troubles of the Superior Market with the alleged conspiracy, was woefully weak. To achieve the connection, petitioner relied upon the alleged statement of an unknown person to the witness *Goldman*, that if the latter sold poultry to Nochemson, "you couldn't get stuff" (R. 519). The unknown was identified only by the name "Max". Who he was, does not appear. Whether "Max" was the defendant Max Keslin, the witness could not say; he never heard the name "Max Keslin" (R. 520).

F.

September, 1931, Price Rise.

The testimony of a number of butchers was introduced by petitioner to demonstrate the dangerous probability of resumption of the alleged conspiracy. They testified to a rise in the price of poultry on September 19, 1931 (R. 288, 555, 598, 607, 610, 615, 616, 624, 626), and in some instances, to alleged statements by marketmen and others to the effect that a new combination of marketmen was being formed to regulate prices (R. 288, 289, 598, 607, 610, 616, 624).

The defendants produced every individual who was alleged to have made the statements concerning a combination to standardize prices.* In each instance, they cate-

* In not a single instance was the alleged speaker connected, inferentially or otherwise, with the alleged conspiracy or conspirators.

gorically denied the conversations attributed to them by the butchers (R. 664, 672, 675, 676, 682, 683, 687, 696, 697, 699, 700, 701, 702, 705, 706, 712, 728). Of great significance is the fact that the butchers of Brooklyn were, at the same time, engaged in a controversy over prices with the marketmen; they objected to their being charged higher prices than chicken dealers (R. 469, 470, 534, 555-557, 559, 677, 686, 687, 688-690).

The proof adequately demonstrates that the price rise on September 19th (a) was not nearly as great as the butchers testified (R. 664, 666, 672, 675, 676, 678, 680, 682-684, 691, 696, 700, 703, 707, 712, 728, 729, 730, 734-737, 738, 740-742, 752, 753, 936, 937, 938),* and (b) was due not to a preconceived plan, but to the dearth of poultry and extra expenses created by the Jewish holidays, which came in on the day of the rise and continued to the end of October (R. 469, 562, 613, 614, 627, 664, 666, 675, 678, 679, 685, 690, 703, 712, 753).

G.

Failure of Appellants to Testify.

The Court below made much of the fact that the appellants, though in Court, failed to take the stand (R. 51, 55). In the existing state of the evidence, there was no necessity for their doing so. "It would be generally agreed, to be sure, that the mere fact of the party's failure to testify is not of itself open to inference; it is his failure when he could be a useful and material witness that is significant"

* The butchers, for example, testified that they were charged 10c. to 12c. a pound above the cost to the marketmen; the books of marketman Gerber, who was one of the alleged profiteers, show that the highest price charged by him was 5c. a pound above his cost (R. 909-934). It also appears that the butchers, in almost every instance in which they believed they were being overcharged, deducted anywhere from one to four cents a pound from their bills, the protests of the marketmen notwithstanding (R. 599, 619, 620, 625, 626, 676, 680, 683, 709, 703, 712, 726).

(Wigmore, Evidence (2d ed.), §289). Their denials regarding the alleged conspiracy, for which they were convicted, were stricken out as sham (R. 25-32). In consequence, they were debarred from testifying with respect thereto. As to the period subsequent to August, 1928, petitioner presented no evidence which required testimony from the defendants, with the exception, possibly, of the Steinberg incident. This matter, being fully covered at the hearing before Judge Knox, and being a part of the record herein (Ex. A), there was no reason even here for them to testify.

In the light of these facts, it is submitted that no unfavorable inferences were properly deducible from appellants' failure to assume the stand.

THIRD POINT.

In any event, the petitioner did not sustain its burden as against the defendants Weiner, Rosenman and Markman. There was no credible evidence connecting them with the alleged conspiracy. The decree should be reversed as against these defendants.

A.

Joseph Weiner was one of the defendants named in the indictment. A verdict was directed in his favor at the close of the Government's case therein (Ex. 7, p. 2).

An analysis of the testimony of each of the witnesses by whom he was mentioned herein, demonstrates that the petitioner has failed to sustain its burden as to him. Not a scintilla of evidence appears to connect him with the alleged conspiracy.

Albert Winkel testified that Weiner was on the payroll of the Chamber of Commerce for two or three weeks in the Summer of 1927, and that he received two week's salary of $75 per week (R. 152). According to the witness, he was hired and paid to represent the marketmen in a controversy with the labor unions, which was then pending; he worked to "smooth out our differences" (R. 165).

Aaron Steinberg, chief complainant against the unions, had nothing but praise for Weiner. He testified that Weiner earnestly endeavored to adjust his difficulties with the unions (R. 196, 199, 200).

Louis Weidberg denied any knowledge of payments of money to Weiner by Benjamin Simon, supervisor of the Chamber of Commerce (R. 208).

David Hirshon testified that Weiner was not present at the sectional meeting of Brownsville marketmen in July,

1927 (R. 251, 252); that Weiner became a delegate of the Shochtim Union in 1927 (R. 256); that Weiner did not receive $50 a week from the Chamber of Commerce (R. 262).

Mack Harnett, concerning Weiner, stated that he was approached by the latter on several occasions, and asked to take on additional union labor (R. 310, 311, 315); that he was told that if he did take additional men, he would be loaded in New York (R. 322).

Barney Hecht (R. 68), to whom the Court referred as "scatterbrained" (R. 68), spoke of a "Weiner" several times in his testimony (R. 400, 401, 409, 416, 417, 421). But whether he was referring to the defendant Joseph Weiner, is impossible of ascertainment in view of his contradictory statements and his inability to identify the latter (R. 409, 416, 417).

The name of Weiner appears also, in the testimony of the witness *Benjamin Rothschild*, who stated of him merely that he was a delegate of the Shochtim Union (R. 499, 500).

The above references include every allusion to Joseph Weiner in the record.

B.

The appellant *Joseph Rosenman* was not a defendant in the criminal prosecution.

In the instant record, he is referred to by *Aaron Steinberg*, who merely stated of him that he was secretary of the Shochtim Union (R. 184).

Louis Weidberg, in his testimony, stated that he made payments to Rosenman, as an officer of the Shochtim Union, to enable East Side marketmen to get additional shochtim on busy days, without further payment (R. 210, 211).

David Hirshon testified that Rosenman did not attend the sectional meeting of marketmen in July, 1927 (R. 251).

Barney Hecht stated that Rosenman handed him the contract which he signed with the Shochtim Union, saying

that Hecht needn't go to Newark or Philadelphia for his poultry thenceforward (R. 438).

Benjamin Rosenfeld testified that Rosenman refused to let him have a shochet unless he promised not to do any wholesale business (R. 450, 454).

Benjamin Rothschild stated upon his examination that he was handed a card by Rosenman, upon being sent to a job, and told not to slaughter for "butchers" (R. 500); that after the criminal trial he was asked by Rosenman why he testified as he did, and told he would be punched in the face (R. 505).

No further references to Rosenman appear in the testimony. Judge Caffey stated regarding him, that his was the case which had "given me most trouble" (R. 63).

C.

Morris Markman was a defendant in the criminal prosecution, but was not convicted therein. In the trial herein, he was not referred to. A single witness, *Barney Hecht,* stated that one "Nigger" told him at the New York Central Railroad Terminal that he was on the "blacklist" and couldn't get poultry (R. 402). No proof that "Nigger" was the defendant Markman appears, however.

D.

Neither Weiner, Rosenman or Markman took the stand. It is submitted, however, that the proof did not require testimony of them. There was nothing for them to deny or to affirm. Not a scintilla of evidence was adduced to connect them with the alleged conspiracy or any act of wrongdoing. In this state of the evidence, unfavorable inferences should not be drawn against them (*See* Wigmore, Evidence (2d ed.) §289).

FOURTH POINT.

The Court below committed reversible error in striking out as sham portions of the answers of the defendants convicted in the criminal prosecution.

A.

Upon order of Honorable John M. Woolsey, District Judge, denials of particular allegations of the amended petition, relating to the alleged original conspiracy were stricken out (R. 25-32). The law of the case was thereby made.

> *Commercial Union of America* v. *Anglo-South American Bank*, 10 F. (2d) 937;
> *Farmers Loan & Trust Co.* v. *Miller*, 298 F. 758;
> *Hadden* v. *Natchang Silk Co.*, 84 F. 80 (aff'd. 179 U. S. 646).

And the convicted defendants were thereby debarred from contradicting by evidence petitioner's proof relating to the said conspiracy.

> *C. I. T. Corporation* v. *Sanderson*, 49 F. (2d) 937, 938.

B.

Judge Woolsey's decision was based upon the alleged fact that the denials in the answers of the convicted defendants, insofar as the first twenty-three paragraphs of the amended petition were concerned, were sham (R. 25-32). This conclusion rested upon a review of the evidence adduced in the criminal prosecution (R. 25-29). It was not based upon the fact of prior adjudication, and the principles

of law relating thereto (R. 25-29). (*Cf.* 53 F. (2d) 518; 44 F. (2d) 393.)

C.

There is no precedent in non-code jurisdictions for the striking out of portions of an answer in equity as sham. Authority for the action of Judge Woolsey is not contained in the Equity Rules. Rule 21 obviously does not authorize a motion to strike out a pleading as sham.*

Cases there are in which the whole of an answer in equity was stricken out. The basis for this action is "an inherent power" of the court "to prevent the abuse of legal machinery" (*Remington* v. *Scoles* (1897), 2 Ch. 1).

See, too:

Reichel v. *Magrath*, 14 App. Cas. 665.

D.

Assuming the power of the District Court to strike out *portions* of an answer, to prevent an abuse of its process, the exercise of the power was not justified herein.

The striking out of a pleading upon this ground is "very unusual"; it is restricted to "exceptional cases" (Lindley, *L. J.*, and Romer, *J.*, respectively in *Remington* v. *Scoles, supra*). "It is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases" (*Lawrence* v. *Lord Norreys*, 15 App. Cas. 210, 219).

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* Rule 21 of the Equity Rules reads as follows: "The right to except to bills, answers, and other proceedings for scandal or impertinence shall not obtain, but the court may, upon motion or its own initiative, order any redundant, impertinent, or scandalous matter stricken out upon such terms as the court shall think fit."

The cases in which the power was exercised are so clear, as to leave not the slightest room for doubt. Evidence respecting the allegations of the condemned pleading was inadmissible in each of these cases as a matter of law (*Lawrence* v. *Norreys*, *supra*; *Reichel* v. *Magrath*, *supra*), or the pleader by sworn testimony, directly contradicted the allegations of his pleading (*Remington* v. *Scoles*, *supra*).

In the instant case, on the contrary, the principle of *res judicata* (except insofar as applied by Judge Bondy, 44 F. (2d) 393), was not applicable so as to render evidence under the stricken denials inadmissible as a matter of law. Nor had the defendants by sworn testimony, in any way contradicted their pleading; rather, they had vigorously denied complicity in the conspiracy: the record of the criminal case is a mass of conflicting testimony (Ex. 7).

In this state of the matter, and in the light of the authorities, it is submitted that insofar as the defendants were not estopped by the prior adjudication, the Court was not justified in striking out portions of their answers. There was no abuse of the Court's process.

FIFTH POINT.

In any event, the decree should be modified by eliminating Paragraph "8 (l)" therefrom, and by limiting the sweep of the injunction to conduct tending to the restraint of interstate commerce.

A.

1. In *Hitchman Coal & Coke Co.* v. *Mitchell*, 245 U. S. 229, the Court modified the decree "by eliminating picketing and physical violence from the sweep of the injunction", upon the ground that it could "find no evidence that either of these forms of interference was threatened" (at p. 262).

2. Paragraph 8 (l) of the decree perpetually enjoins the defendants "from using any of the offices or positions in Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, or in the Official Orthodox Poultry Slaughterers of America, Inc. or in similar organizations, for the purpose of coercing marketmen to buy poultry, poultry feed, or other commodities necessary to the poultry business, from any particular sellers thereof" (R. 81).

Not a scintilla of evidence appears in the record to justify this portion of the decree. The sale of feed is nowhere mentioned in the record; the use of coercion in its distribution does not appear even by inference.

With the renting of coops by the New Jersey Coop Company or Bernstein & Sons, the defendants were in no way concerned (R. 886). Not an iota of evidence appears to justify an inference that the defendants coerced, or threatened coercion of marketmen, in the purchase of coops or other commodities from particular sellers.

B.

In view of the finding of the Court below that interstate commerce ceased with the sale from the receiver to the marketman, the injunction should have been limited to acts and conduct of the defendants only in so far as the same restrained commerce to this point. The transactions of the marketman after the sale are admittedly intrastate commerce. Consequently, in so far as the defendants are concerned with these matters and with the marketman after the sale by the receiver, they are engaged solely in intrastate trade. As thus engaged, their acts had no direct or substantial effect upon interstate commerce.* It was, therefore, error to enjoin them beyond the point indicated.

Industrial Assn. v. *U. S.*, 268 U. S. 64;
Anderson v. *U. S.*, 171 U. S. 604;
United Mine Workers v. *Coronado Coal Co.*, 259 U. S. 344;
United Leather Workers v. *Herbert & M. Trunk Co.*, 265 U. S. 457.

It follows that the decree should be modified, and the injunction limited to acts of the defendants directly connected with interstate commerce.

CONCLUSION.

The decree should be reversed, or, in the alternative, modified to the extent set forth above.

Respectfully submitted,

SAMUEL H. KAUFMAN,
NATHAN D. PERLMAN,
Appellants' Solicitors.

* During the period of the alleged conspiracy, there was no decrease in interstate trade and commerce in live poultry (R. 373). On the contrary, in the three years preceding the trial herein, there was an increase of five per cent. in the traffic (R. 754).

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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 6

LOCAL 167 OF THE INTERNATIONAL BROTHERHOOD OF Teamsters, Chauffeurs, Stablemen & Helpers of America, Carl Firestone, Charles Gershowitz, et al., appellants

v.

THE UNITED STATES OF AMERICA

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the United States District Court (R. 49) has not been reported. The court's explanatory comments (R. 82) on the decree which it entered have not been reported. Three opinions by the District Court rendered upon the Government's motions to strike out as sham certain denials in the defendants' answers to the petition are reported,

one in 44 F. (2d) 393 and two in 53 F. (2d) 518. The last of these three opinions is printed in the present record. (R. 25–29.)

JURISDICTION

The decree of the District Court was entered February 6, 1932. (R. 75.) Petition for appeal was filed April 5, 1932, and was allowed the same day. (R. 84, 86.)

Jurisdiction of this Court is conferred by Section 2 of the Act of February 11, 1903, c. 544, 32 Stat. 823 (U.S.C., Title 15, Sec. 29), and by Section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938 (U.S.C., Title 28, Sec. 345).

QUESTIONS PRESENTED

Live poultry is shipped to New York City from various western States. This poultry is delivered to commission men, called "receivers", at railroad terminals located in New Jersey and New York City. The receivers immediately sell the poultry at these railroad terminals or at their stands in West Washington Market in Manhattan to wholesalers, called "marketmen", doing business in New York City.

The questions presented are:

(1) Whether defendants' combination restrained interstate commerce. This question turns upon the subsidiary questions (a) whether the combination substantially restrained the sale and delivery of

poultry to certain marketmen from points outside of New York State and (b) whether, when the combination prevented certain marketmen from obtaining poultry from receivers in New York City, the commerce thus restrained was interstate.

(2) Whether the District Court correctly found that the conspiracy continued up to the time of filing suit and that there was a dangerous probability of resumption of illegal activity thereunder.

(3) Whether denial of the conspiracy by those defendants who had previously been convicted of the same conspiracy in a criminal proceeding under the Sherman Act was properly stricken out by the District Court as a sham denial.

(4) Whether the decree properly enjoined certain intrastate acts and conduct and whether there was evidence to justify prohibiting use of union influence to coerce marketmen to buy poultry and poultry supplies from particular sellers.

(5) Whether there is sufficient evidence to connect appellants Markman, Rosenman and Weiner with the conspiracy.

STATUTE INVOLVED

The Act of July 2, 1890, c. 647, 26 Stat. 209 (U.S.C., Title 15, Secs. 1, 2, and 4), known as the Sherman Antitrust Act, provides in part as follows:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is

hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

* * * * *

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. * * *

STATEMENT

This is an appeal from a decree of the United States District Court, entered under Section 4 of the Sherman Antitrust Act, enjoining appellants

(and other defendants who have not joined in the appeal) from conspiring to restrain and monopolize, and from restraining, that part of the interstate commerce in live poultry involved in deliveries and sales to marketmen doing business within the metropolitan area of New York City.

The conspiracy involved in this appeal commenced in May, 1927. The principal conspirators are wholesale poultry dealers, known as marketmen, doing business in the metropolitan area of New York City, and delegates and members of two labor unions operating in the live poultry industry in New York City. The marketmen, who purchase live poultry imported from other States, slaughter this poultry and then sell it to retailers, agreed upon a system of allocating these retail customers among themselves and also agreed to increase the prices they charged retailers. Marketmen and retailers were spied upon and, if they did not comply with the demands of the conspirators, were blacklisted. Blacklisted marketmen were prevented from purchasing live poultry upon its arrival in New York City after shipment thereto in carload lots from other States for immediate sale to marketmen. Physical violence, destruction of property and various forms of intimidation were used in enforcing the conspiracy. Delegates and members of the two defendant labor unions aided in carrying out the conspiracy by refusing to load, transport, handle, deliver, or slaughter live poultry for recalcitrant marketmen. To pay for these en-

forcement activities and to hire men to obstruct those who resisted the conspiracy, an association composed of New York City marketmen attempted to collect, and in large measure did collect, a levy of 1¢ a pound on all poultry sold by marketmen.

Most of the issues involved in this appeal were litigated in an earlier criminal prosecution under the Sherman Act commenced in August, 1928, in the United States District Court for the Southern District of New York against substantially the same defendants as the defendants in the present equity proceeding. (R. 939.) After the jury had returned a verdict of guilty against 66 defendants on November 21, 1929 (Fng.[1] 25, R. 42; Ex. 23, R. 779), the Circuit Court of Appeals affirmed the convictions on January 12, 1931. *Greater New York Live Poultry Chamber of Commerce* v. *United States,* 47 F. (2d) 156, certiorari denied, 283 U.S. 837.

The United States filed its petition in the present cause February 7, 1930, and filed its amended petition April 16, 1930. (R. 1, 126.) The defendants are the Greater New York Live Poultry Chamber of Commerce (hereinafter referred to as the Chamber of Commerce), Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Jobbers and Stablemen of America (hereinafter referred to as Local 167), the Official Orthodox Poultry

[1] The abbreviation "Fng." is used to refer to the District Court's numbered findings of fact.

Slaughterers of America, Inc. (hereinafter referred to as the Shochtim Union), and approximately 100 individuals, 75 of whom are marketmen. (R. 5–8.) The Chamber of Commerce is an association of marketmen doing business in the metropolitan area of New York City. (Fng. 1, R. 34.) Local 167 is a labor union whose members load, handle and truck live poultry in New York City. (Fng. 2, R. 34.) The Shochtim Union is a corporation composed of shochtim (singular shochet), who are the only persons qualified to slaughter poultry in accordance with Jewish dietary laws. (Fng. 3, R. 34.)

The amended petition alleges the same conspiracy, and use of the same means in carrying it out, as had been charged in the prior criminal indictment. (R. 1–16, 939.) After answers had been filed, the District Court, on motion of the Government, struck out as sham the convicted defendants' denial of the conspiracy (including the means used in effecting it), but it did not strike out their denial of continuance of the conspiracy after August, 1928, as alleged in the amended petition. (R. 16–20, 29–30.) *United States* v. *Greater New York Live Poultry Chamber of Commerce,* 53 F. (2d) 518.

At the conclusion of an extended trial,[2] at which 116 witnesses were called, the court delivered an

[2] During the course of the trial decrees were entered by consent against about half of the defendants. (R. 50.)

oral opinion in which it stated that every material allegation of the amended petition had been proved, except that two of the defendants had not been shown to be parties to the conspiracy. (R. 49–50, 63–64, 73.) Some time later the court filed findings of fact and conclusions of law and entered a comprehensive final decree against 52 defendants. (R. 33–48, 75–81.) Only Local 167, the Shochtim Union and 14 individual defendants have appealed from this decree.[3] (R. 84.) Appellants state (brief, p. 1) that all of the individual appellants are members of one or the other of the two appellant unions.

At least 98% of the live poultry sold in the city of New York is shipped from outside the State of New York. (Fng. 5, R. 35.) About 90% of this poultry comes in by freight and the remainder by express or by truck. (R. 361.) Approximately one half of the rail shipments arrive at the Manhattan terminal of the New York Central Railroad and the other half at five railroad terminals in New Jersey. (Fng. 5, R. 35; R. 372–373.)

The poultry is gathered from farms by concentrators who sell it to "shippers." (R. 359.) These shippers put the poultry in specially built railroad cars containing 128 steel cages known as decks, and send it consigned to commission men, called receiv-

[3] No decree was entered against appellant Samuel Silverman (R. 76, 77, 84), who probably was inadvertently named as an appellant. All of the appellants except Morris Markman, Joseph Rosenman and Joseph Weiner were convicted in the criminal case. (R. 84, 779–782.)

ers, generally on straight bills of lading. (R. 360, 361, 366, 373.) Upon arrival at the railroad terminals, the poultry is unloaded, inspected, weighed and placed in coops. (Fng. 5, R. 35; R. 364.) The receivers, about 20 in number, sell the poultry to marketmen, from 60% to 80% being sold directly from the freight cars at the terminals and the remainder being sold at the stands which the receivers maintain at West Washington Market in Manhattan adjoining the Hudson River. (Fng. 5, R. 35–36; R. 360.) Since poultry is a highly perishable commodity, most of it is sold on the day of unloading, and about 50% of the poultry is ordered by marketmen, subject to inspection, either while the cars are in transit or before the poultry is unloaded. (Fng. 5, R. 35; R. 378.) The marketmen, after purchasing poultry, have it loaded on trucks, either at the railroad terminals or at West Washington Market, and transported to their places of business. (Fng. 5, R. 36.) The poultry remains in the coops in which it is placed at the terminals until it arrives at the marketmen's places of business and the shipper pays for the rental of these coops. (R. 363, 370, 375.)

Normally the shipper receives the market price (established by sales to marketmen) on the day of unloading. (R. 362, 366–367, 377–378.) When a receiver, after having sold a shipment of poultry, discovers that others have sold at a higher price on that day, he will try to remit his own sales price, but he may remit the higher price if the shipper's

business is substantial and if the shipper demands this higher price. (R. 372.) Sometimes the shipper demands and the receiver agrees to pay a premium above the market price for desirable grades of poultry which command a higher price than ordinary poultry. (R. 363.) The receiver, in remitting to the shipper on the basis of these various price arrangements, deducts therefrom the charges for freight, unloading at the terminal, coopage, cartage to West Washington Market, and a commission ranging from 3% to 5%. (Fng. 5, R. 36; R. 363.)

The receivers handle from 80% to 98% of the poultry on a commission basis, as just outlined; they purchase the remainder outright at a flat price, which is agreed upon prior to delivery of the poultry. (R. 368, 370.) In handling "commission" poultry, the receiver acts as a bank and collection agency for the shipper, keeps him fully advised as to market conditions, and obeys the shipper's instructions as to time of unloading and as to price. (Fng. 5, R. 36; R. 371, 379.)

The work of loading coops on trucks at the New York Central terminal and at West Washington Market, of hauling coops from the New York Central terminal and from West Washington Market to the marketmen's places of business, and of hauling coops from the New York Central terminal to West Washington Market, is done by members of Local 167. (Fng. 2, R. 34.) The poultry is

slaughtered by shochtim in the employ of marketmen. (Fng. 3, R. 34.)

We now turn to a statement of the conspiracy and of its effect upon interstate commerce in live poultry. Shortly after Benjamin Simon became Supervisor of the Chamber of Commerce in May, 1927, he called a meeting of the board of directors of the Chamber and told them that he wanted $5,000 a week and suggested that this be raised by a levy of 1¢ per pound on all poultry sold by marketmen. (Fng. 7, R. 36.) Simon appointed collectors, who for the most part were directors of the Chamber, for each district in the metropolitan area, namely, Bronx, Harlem, East Side, Williamsburg, Borough Park, and Brownsville. (Fng. 9, R. 38.) The collectors called meetings of marketmen in their respective districts and told the marketmen that they would have to contribute 1¢ per pound on all poultry which they sold. (Fng. 10, R. 38.) The marketmen allocated the poultry dealers and butchers among themselves and agreed not to sell to customers allocated to others, arbitration committees being appointed to allocate disputed customers. (*Ibid.*) The collectors were frequently accompanied by bookkeepers, who examined the books to see how much poultry had been sold and who the customers were. (R. 143, 180, 205, 249, 297.)

Only a portion of the total collections, which amounted to about $1,000,000 the first year, was

paid to Simon.[4] (Fng. 13, R. 39.) It was agreed that the money collected was to be used to maintain and enforce the system of allocating customers among marketmen by hiring men for the purpose of spying upon, reporting, threatening and obstructing marketmen and retailers who did not abide by the allocation agreement; to prevent recalcitrant marketmen from obtaining poultry from any source whatever; to bribe public officials charged with the enforcement of the antitrust laws; and to make payments to certain of the small marketmen and poultry dealers who were doing both a wholesale and retail business, in return for their agreement not to sell wholesale. (Fng. 8, R. 37.)

At various organization meetings of marketmen David Hirshon, the president of the Chamber of Commerce (R. 271), told the marketmen that the 1¢ per pound collections would be used to hire men to see that customers bought poultry where they were supposed to buy; that if any customer left the market to which he was allocated, these men would bring him back; that anyone who did not pay 1¢ a pound would have his poultry stopped; that "gangsters" were going to be used to make the marketmen do as they were told; and intimated that there was an agreement with the unions to

[4] On the East Side collections aggregated $2,100 to $3,200 per week, of which $1,030 was paid to Simon; in the Bronx they aggregated $2,000 to $2,500 per week, of which $900 to $1,000 was paid to Simon. (Fng. 12, R. 38–39.)

make retailers take additional employees if they sold wholesale. (R. 297, 538, 539.)

The marketmen were told to advance their prices, and were occasionally told by leaders of the respective districts what price to charge. (Fng. 11, R. 38.) Although prior to June, 1927, the marketmen had charged 3¢ or 4¢ a pound more than they paid receivers, after that time they concertedly charged from 6¢ to as much as 18¢ a pound more than they paid receivers.[5] (*Ibid.*)

Marketmen who sold to poultry dealers and butchers not allocated to them, or who refused to pay the 1¢ a pound, were prevented from buying and loading poultry at West Washington Market (R. 132–133, 136, 225, 244–246, 291–292, 307–308, 326, 335, 349, 352, 387, 402–403, 538–540, 579, 647, 651; Ex. A, R. 829, 832); at the New York Central Terminal (R. 243, 303, 350–352, 418, 422, 539–540); at the railroad terminals in New Jersey (R. 133, 135, 291, 303, 325, 327, 352, 401, 421, 539–540); in Newark and Elizabeth, New Jersey (R. 190, 422, 429–430, 471); in Philadelphia (R. 177, 189, 426,

[5] Shipments of live poultry to the New York market average about 200 cars a week, or 10,400 cars a year, and a carload weighs about 18,000 pounds. (R. 373, 691.) Annual receipts of live poultry therefore approximate 187,000,000 pounds. If the marketmen's price advances averaged 6¢ a pound, this increased the retailers' costs by more than $11,000,000 a year; if these price advances averaged only 3¢ a pound, retailers' costs were increased by over $5,500,000 a year. These higher costs would, in the ordinary course, be passed on to the consuming public.

445, 653; Ex. A, R. 832), and other places outside New York (R. 190–191, 311–312; Ex. A, R. 832–835).

New Jersey marketmen who supplied New York retailers and butchers were blacklisted and prevented from purchasing poultry in West Washington Market (R. 132–133, 465), and at the New Jersey railroad terminals (R. 133–135, 465).

The following are examples of threats made to recalcitrant marketmen and to retailers who did not buy exclusively from the marketmen to whom they were assigned:

"I am going to give you a bullet in the heart" (R. 489);

"I am going to beat you up" (R. 232);

"I am going to blow your brains out" (R. 273);

"We are going to kill you" (R. 407).

In many instances there was actual violence. Recalcitrant marketmen and retailers or their employees were beaten (R. 193, 215, 306, 401–402, 541), or the tires of their trucks were cut (R. 215, 307, 407), or emery placed in the motor (R. 273, 277), and on one occasion a truck was stolen and practically demolished [6] (R. 193). On another occasion a recalcitrant retailer's home was bombed immediately after he had been threatened by the president of the Chamber of Commerce. (R. 487–489.)

[6] Exhibits 18, 19, and 20 are photographs showing some of the damage to this truck. (R. 193–194, 760–762.)

Memoranda of the weekly receipts and disbursements of the collector on the East Side were introduced in evidence. (R. 207; Ex. 21, R. 763.) The memoranda, read in the light of the testimony of this collector, show weekly payments of $15 or $25 to appellant Max Keslin, an official of Local 167, and weekly payments ranging from $100 to $455 to the Shochtim Union or its officials. (R. 209, 210; Ex. 21, R. 763–777.) There was also testimony that each district paid the president of the Shochtim Union $75 a week. (R. 7, 145–146.) Albert Winkel, president of the Chamber of Commerce until August, 1927, testified that while he was president appellants Charles Herbert and Joseph Weiner, delegates of the Shochtim Union (Fng. 3, R. 34), were on the pay roll of the Chamber for two or three weeks during the summer of 1927 at $75 a week, with no duties to perform. (R. 152.) A witness saw a collector in the Brownsville district pay $75 to appellant Carl Firestone, one of those whom the District Court found employed threats and violence to compel adherence to the allocation agreement. (Fng. 23, R. 41; R. 306.)

The union delegates were active in suppressing price cutting and in preventing sales and deliveries to retailers not allocated to particular marketmen. (R. 325, 345, 349, 497, 567.) They visited price-cutters, told them what prices to charge, erased their low-price signs, threatened them with violence

and sent back spies to see if their instructions were being opposed. (R. 272–273, 400–401.) Marketmen under suspicion were watched by other marketmen and union members jointly. (R. 305–306.) Shochtim were instructed by the delegates not to slaughter for "strange butchers". (R. 305, 325, 335, 345, 348–349, 497, 500, 540.) Marketmen who resisted the conspiracy were required by union delegates to employ an excessive number of laborers or slaughtering was interrupted upon the pretext of a violation of union regulations. (R. 301, 311, 322, 327, 349, 350, 352, 401, 539.) On some occasions marketmen who refused to abide by the conspiracy were required to take union men, who were instructed to do as much damage and as little work as possible. (Fng. 20, R. 40.) When blacklisted marketmen attempted to obtain poultry from Philadelphia and other distant points, they were threatened with violence by union delegates and other marketmen. (Fng. 21, R. 40.) The president of the Chamber of Commerce accompanied a delegate of Local 167 to Philadelphia and ordered a poultry commission man there not to ship to New York marketmen without the union's consent. (*Ibid.*)

Concerning the relation of the unions to the conspiracy, the District Court said in its opinion (R. 55):

> Gentlemen, there is one feature of this case which is fatal, as I conceive it, to any con-

tention that there was not a conspiracy or that the unions did not share in the great responsibility for it; and that feature is the concurrence, shown by the proof so frequently of the enforcement by the unions of their rules whenever marketmen or butchers became recalcitrant. That feature is astounding. * * *

SUMMARY OF ARGUMENT

I. Defendants' combination to interfere with the sale and delivery of live poultry to marketmen who do not comply with the demands of the conspirators is a combination in restraint of interstate commerce. At least 98% of the poultry purchased by marketmen doing business in the metropolitan area of New York City is shipped to this area from outside of New York State. The combination restrained interstate commerce in two ways, first, by interfering with the sale and transportation of poultry from one State to another and, second, by preventing recalcitrant marketmen from obtaining poultry from receivers in New York City before interstate transportation of the poultry had come to an end.

The defendants, as a part of their combination, intended to prevent recalcitrant marketmen from obtaining poultry from any source. Interference with the sale and transportation of poultry from one State to another was within the scope of the conspiracy and there were numerous instances of

restraint of such interstate commerce. The commerce thus restrained was substantial; New York City marketmen purchase a large percentage of their poultry at the New Jersey terminals. Under these circumstances the doctrine of *de minimis,* upon which appellants rely, is wholly inapplicable.

The defendants also interfered with interstate commerce by preventing recalcitrant marketmen from obtaining poultry from receivers at the New York Central terminal and at the receivers' stands in West Washington Market. Appellants do not deny that defendants combined to restrain this commerce, but they contend that it is not interstate. We submit that the interstate movement of poultry shipped to New York City from other States does not come to an end until sale and delivery to marketmen. The movement is certainly not broken when the poultry is loaded on the marketmen's trucks at the railroad terminal. The movement is also not broken when, in the process of finding a purchaser, the coops in which the poultry is placed at the New York Central terminal are first taken to the receivers' stands and are there sold, generally on the day of unloading, to marketmen. Receivers are merely a conduit through which flows the daily stream of commerce from shippers to marketmen.

II. The District Court found that the conspiracy continued in existence before and after suit was filed and that there was a continuous and dangerous probability of resumption of the means and meth-

ods employed in carrying it out. Since the objectives of the combination contemplated and required future as well as present restraint of trade, injunctive relief should be refused only if the defendants showed that the conspiracy had been abandoned. We submit that not only was abandonment not established, but that there is affirmative evidence that the conspiracy, although partially dormant, continued in existence.

After August, 1928, when a criminal proceeding under the Sherman Act was started against substantially the same defendants, several new organizations of marketmen were formed with purposes and activities similar to those employed by the conspirators prior to August, 1928. After August, 1928, there were numerous instances of restraint of trade of the same type, and enforced by the same means and by the same parties, as disclosed in the trial of the criminal case. Defendants' failure to testify, when the facts were peculiarly within their knowledge, creates a strong inference against them.

An intent to restrain interstate commerce being shown, a dangerous probability of future acts in restraint of trade is enough to justify equitable relief. The Sherman Act directs itself against that dangerous probability as well as against the completed result. *Bedford Cut Stone Co.* v. *Stone Cutters' Association,* 274 U.S. 37, 55.

III. Since certain of the defendants in the present equity case had been previously convicted in a

criminal proceeding under the Sherman Act charging the same conspiracy, the District Court properly struck out as sham that part of the answers of the convicted defendants which denied this conspiracy. Adjudicated questions cannot be relitigated in a subsequent suit between the same parties. The doctrine of *res judicata* applies to a criminal conviction. The primary purpose of pleadings being to define and narrow the issues before trial, pleadings which do not perform this function may be stricken out. The District Court, by looking at its own records, ascertained that certain defendants had been found guilty of the conspiracy charged in the present suit. Denial of this adjudicated fact was a sham and the court had power to eliminate this false issue.

In any event the convicted defendants were not prejudiced by the action of the District Court. The conspiracy was independently established and no evidence offered by any defendant was excluded as being barred by the court's ruling on the Government's motion to strike.

IV. The prohibitions of the decree are properly not limited to acts done in the course of interstate commerce. The evidence also justifies the provisions of the decree prohibiting coercion by the defendant unions to compel marketmen to buy poultry and poultry supplies from particular sellers.

V. There is sufficient evidence to connect appellants Morris Markman, Joseph Roseman, and Joseph Weiner with the conspiracy.

ARGUMENT

I

DEFENDANTS' COMBINATION TO PREVENT THE SALE AND DELIVERY OF LIVE POULTRY TO RECALCITRANT MARKETMEN IS A CONSPIRACY IN RESTRAINT OF INTERSTATE COMMERCE

When New York City marketmen purchase poultry at the New Jersey terminals, this is a purchase in interstate commerce, contemplating immediate transportation of the poultry from New Jersey to New York. The sale and delivery of poultry to marketmen from points outside New York State, other than the New Jersey terminals, is likewise an interstate transaction. We contend that the commerce involved in purchases by marketmen at the New Jersey terminals and other places outside New York is substantial and that the conspiracy embraced restraint of such commerce and did restrain it.

Defendants' combination also prevented recalcitrant marketmen from obtaining poultry from receivers at the New York Central terminal and at West Washington Market. We shall later urge that live poultry shipped to New York City from other States remains in interstate commerce until sold and delivered to the marketmen and that when the combination laid the heavy hand of restraint upon the free interchange of poultry from receivers to marketmen within the limits of New York City, the commerce restrained was interstate.

Since New York marketmen purchase approximately one third of all their poultry at the New Jersey terminals, the extent and importance of the commerce involved in purchases outside of New York State can hardly be questioned. About 37½% of all the live poultry shipped by rail to the New York market is disposed of at the New Jersey terminals, principally to New York marketmen.[7] (R. 365.) Appellants concede (brief, p. 9) that 37½% of the poultry shipped by freight to the New York market "is loaded on the trucks of marketmen at the New Jersey terminals" and that New York marketmen purchase the "majority" of this 37½%.

When New York marketmen buy poultry at the New Jersey terminals the poultry is sometimes loaded on their trucks at the terminals. (R. 379.) On other occasions poultry ordered at the New Jersey terminals is brought to West Washington Market by a trucking company employed by the receivers and then transferred in the street or elsewhere from the trucks of this company to the marketmen's trucks, but in that event the poultry is not considered sold until loaded on the marketmen's trucks. (*Ibid.*) We submit that the purchase is an interstate transaction whether delivery is made in New Jersey or New York. When the purchase is completed in New Jersey, the buyer acquires the

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[7]About 90% of the receipts at New Jersey terminals is sold to New York marketmen. (R. 373.)

poultry for the purpose of immediately transporting it to New York. Interstate commerce includes the buying and selling of goods for shipment to another State where such shipment is the regular course of business. *Lemke* v. *Farmers Grain Co.*, 258 U.S. 50, 54–55. When poultry is ordered in New Jersey for delivery in New York, this calls for an interstate movement of the goods and directly involves interstate commerce.

Since, then, the marketmen's purchases at New Jersey terminals are substantial and interstate, the only remaining question in this connection is whether interference with this commerce is within the scope of the conspiracy. The District Court in its opinion pointed out that if defendants' combination had not included restraint upon the purchase of poultry at the New Jersey terminals and at other cities outside of New York State "the scheme as it was designed, and as was proved in this case, would have been wholly ineffective" and that defendants' interference with this commerce "was not merely incidental". (R. 53.) The president of the Chamber of Commerce told a blacklisted marketman, "As quick as you can find a place where to load poultry, that is how quick we will find a place where to stop it." (R. 311.)

The District Court found that defendants combined to prevent recalcitrant marketmen from obtaining poultry at the New Jersey terminals and at other places outside New York and that this plan

was carried out. (Fngs. 8, 15, 17, 21; R. 37, 39–40.) The evidence amply supports these findings. On repeated occasions the defendants directly interfered with the purchase of poultry by marketmen at the New Jersey terminals. (R. 133, 135, 291, 303, 325, 352, 401–402.) When blacklisted marketmen, cut off from their ordinary sources of supply, attempted to obtain poultry from other cities, such as Philadelphia, Newark, N.J., Elizabeth, N.J., and Lincoln, Neb., threats and other coercive tactics were successfully employed to block these purchases. (R. 177, 189–190, 422, 426, 429–430, 445–447, 471, 652–653; Ex. A, R. 832–835, 838–840.) When New York retailers attempted to buy from New Jersey marketmen because of the high prices charged by New York marketmen, the defendants interfered with such purchases, and they also prevented New Jersey marketmen who sold to such retailers from purchasing poultry in West Washington Market. (R. 132–133, 380–381, 465, 525, 564–565, 570.)

Appellants have undertaken to summarize (brief, pp. 28–31) all of the evidence relating to restraints (other than those involved in purchases by New York marketmen at the New York Central terminal or at West Washington Market). We shall not review all the evidence for the purpose of showing omissions or understatements in appellants' summary, but, by way of illustration, we shall set forth the evidence relating to restraints upon Mack Harnett's purchases of poultry in other States. We

also suggest comparison between appellants' summary (brief, p. 31) of the restraints imposed upon Aaron Steinberg with the District Court's Finding 29 (R. 44).

While Harnett was blacklisted, the receivers refused to sell him poultry, not only at West Washington Market, but also at the New Jersey terminals, although he did not owe the receivers any money and had regularly purchased poultry from them before that time. (R. 302–303.) When he went with his own truck to get poultry in other States (R. 303), he was trailed on several occasions—by defendants Rosenstein and Kaufman (business representative of Local 167), by a brother of defendant Firestone, and by defendant Arthur Herbert (delegate of Local 167). (R. 305, 308.) When a Philadelphia commission man sent a truck load of poultry to New York, part of which was for Harnett, defendant Keslin met the truck driver at West Washington Market and told the driver that he had men waiting at the Williamsburg bridge to stop the truck and destroy the load. (R. 652–653.) A little later three or four cars drove up with defendants Charles Herbert, Arthur Herbert, and others and the driver was told that if he did not return to Philadelphia they would throw the load of poultry in the river. (R. 653.) These threats were effective; the driver took the poultry back to Philadelphia. (*Ibid.*)

Appellants state (brief, p. 30) that Harnett "was engaged in a labor controversy at the time." They

fail to mention that union delegates ordered his employees out the day after he had been warned by the president of the Chamber of Commerce not to sell to strange customers; that union delegates also told Harnett not to sell to strange customers; that he was able to obtain poultry as soon as he agreed with the Chamber of Commerce not to do a wholesale business. (R. 301–302, 305, 307, 308.)

Since the defendants intended to prevent recalcitrant marketmen from obtaining poultry in other States and since the commerce thus restrained was substantial, the doctrine of *de minimis* as illustrated in *Industrial Association* v. *United States*, 268 U.S. 64, upon which appellants rely, is wholly inapplicable. That case was a proceeding under the Sherman Act involving a combination by building contractors and dealers in building materials to establish the open shop in the building industry in San Francisco, by requiring builders who desired building materials of certain kinds to obtain permits from a Builders Exchange, and by refusing such permits to those who did not maintain an open shop. This Court found (p. 77) that interference with interstate trade "was neither desired nor intended" and that "to this end, the selection of materials subject to the permit system was substantially confined to California production." The Court further found (p. 84) that direct interference with interstate sales and shipments was limited to "some three or four sporadic and doubtful instances, during a period of nearly two years",

involving material of negligible value. The Court therefore said that the weight of these instances, as evidence to establish a conspiracy to restrain interstate commerce or to establish such restraint in fact, "becomes so insignificant as to call for the application of the maxim, *de minimis non curat lex.*"

Even if the evidence of actual restraint upon purchases outside of New York were far less convincing than it is, the very infrequency of the overt acts of restraint might merely attest the success of the conspiracy. Under the Sherman Act no showing of specific overt acts is necessary. In *Nash* v. *United States*, 229 U.S. 373, 378, this Court said that "the Sherman Act punishes the conspiracies at which it is aimed on the common law footing—that is to say, it does not make the doing of any act other than the act of conspiring a condition of liability."

In the criminal case [8] the Circuit Court of Appeals said (p. 159):

> * * * it is urged that the evidence of interferences in New Jersey should be disregarded on the principle of de minimis, as illustrated in the Industrial Association Case. With this contention we do not agree. The number of instances does not limit the inference to be drawn from them, and the jury might well have concluded that the plan

[8] *Greater New York Live Poultry Chamber of Commerce* v. *United States*, 47 F. (2d) 156, *supra.*

involved New Jersey deliveries as well as those in New York. Indeed, it would have to do so in order to be effective against recalcitrant New York marketmen. Nor were the New Jersey deliveries so small a part of the whole as to fall within the de minimis principle.

But the interstate commerce restrained by defendants' combination is not limited to that involved where poultry is sold for immediate transportation or delivery in another State. The combination also prevented New York marketmen from purchasing poultry from receivers at the New York Central terminal and at West Washington Market.[9] We submit that the commerce thus restrained is interstate, that live poultry shipped to New York City moves in interstate commerce until sold and delivered to marketmen.

Poultry is shipped from various western States consigned to New York receivers, about 200 cars arriving each week (R. 373). When such a shipment is made, the receiver immediately attempts to find a purchaser among the marketmen. (R. 369–370.) He takes orders for about half the poultry, subject to inspection, either while the car is in transit or before it is unloaded. (Fng. 5, R. 36; R. 372.) Of the poultry arriving at the New York Central terminal, from 60% to 65% is loaded on

[9] Appellants do not deny that the combination interfered with such purchases; their defense is that the commerce thus affected is intrastate.

the purchasing marketmen's trucks at the terminal. (R. 373.) The receiver sells the poultry, which is highly perishable, as rapidly as possible and most of it is sold on the day of unloading.[10] (Fng. 5, R. 35; R. 378.) The receiver is "practically a bank for the shipper and a collection agency", and the receiver advises the shipper daily concerning market conditions. (R. 371.) The shipper may dictate the price at which the poultry shall be sold. (Fng. 5, R. 36.) Irrespective of whether or not the shipper retains legal title, his interest in the poultry does not cease when it comes into the custody of the receiver, and the price which the shipper receives depends upon the market price established by sale to marketmen. In the criminal case the Circuit Court of Appeals, with the same evidence before it (R. 52, 359, 369), said:[11]

> It was clearly contemplated by the shippers that the poultry should pass through the receivers to the marketmen, for the shippers paid the charges for unloading, cooping and cartage to West Washington Market, and the price paid the shippers depended on market price made by resale to the marketmen.

The receivers thus serve as mere intermediaries between shippers and marketmen; they are a con-

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[10] We question appellants' statement (brief, pp. 22, 27) that poultry is often kept by receivers for as long as two weeks. The testimony upon which it rests is, "We have it sometimes a week or two." (R. 364.)

[11] *Greater New York Live Poultry Chamber of Commerce* v. *United States*, 47 F. (2d) 156, 158, *supra*.

duit through which flows the daily stream of commerce from shippers to marketmen. When poultry is loaded on the marketman's truck at the New York Central terminal, the flow of poultry from shippers to marketmen is clearly unbroken and continuous. Unloading, inspection, weighing and sale of the poultry at the terminal are services incidentally performed to promote the regular and steady movement of live poultry from shippers to marketmen. It follows that a combination, such as this one, which interposes barriers to the free flow of this commerce, by arbitrarily obstructing sales and deliveries to marketmen at the railroad terminal in New York, is a combination in restraint of interstate commerce.

We also submit that the interstate character of the shipment is not changed where, in the process of finding a purchaser among the marketmen, poultry is trucked to the receivers' stands in West Washington Market and there sold. These stands are in every way analogous to stockyards through the medium of which buyers are found for livestock shipped to the stockyards from other States. This Court has held that sales on such stockyards are sales in interstate commerce and that the stockyards and the commission men who make the sales are instrumentalities of such commerce.

In *Swift & Co.* v. *United States,* 196 U.S. 375, the defendant meat packers were charged with conspiring to restrain and monopolize interstate commerce by, *inter alia,* agreeing not to bid against

each other in the purchase of livestock at certain stockyards. This Court, in rejecting the contention that interstate commerce was not affected by this agreement, said (pp. 398–399):

> When cattle are sent for sale from a place in one State, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the interruption necessary to find a purchaser at the stockyards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the States, and the purchase of the cattle is a part and incident of such commerce.

In *Stafford* v. *Wallace,* 258 U.S. 495, the provisions of the Packers and Stockyards Act authorizing the Secretary of Agriculture to prescribe rules and regulations governing practices and charges on the large stockyards of the country were sustained as a valid exercise of the power of Congress to regulate interstate commerce. The Court said (pp. 515–516):

> The stockyards are not a place of rest or final destination. Thousands of head of livestock arrive daily by carload and trainload lots, and must be promptly sold and disposed of and moved out to give place to the constantly flowing traffic that presses behind. The stockyards are but a throat through which the current flows, and the transac-

> tions which occur therein are only incident to this current from the West to the East, and from one state to another.

We submit that the two foregoing cases do not turn, as appellants contend (brief, pp. 25–26), upon the fact that livestock, after sale at the stockyards, is ordinarily either reshipped to another State or turned into meat products which are transported to another State. In the *Swift* case this Court said (p. 400) that the prohibitions of the decree should be confined to livestock which "is sent from other States to the stockyards for sale *or* is bought at those yards for transport to another State". (Italics ours.) In other words, if the cattle have been shipped from another State, this is sufficient to establish the interstate character of the stockyards sale.[12]

Binderup v. *Pathe Exchange, Inc.*, 263 U.S. 291, *supra*, indicates that the interstate character of the movement from western shippers to New York marketmen is not broken by an intermediate delivery of the poultry at the receivers' stands in West Washington Market. That case held (see p. 309) that when New York distributors leased motion picture films to a Nebraska exhibitor and sent the

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[12] The circumstances under which this Court has relied upon (*Binderup* v. *Pathe Exchange, Inc.*, 263 U. S. 291, 310–311) and distinguished (*Industrial Association* v. *United States*, 268 U.S. 64, 79, *supra*) the two stockyards cases show that the interstate movement of livestock, after sale and purchase at the stockyards, is not a controlling factor in the decision of these cases.

films to their Nebraska agency to be held by it for delivery to various Nebraska exhibitors, delivery of the films to the local agency did not end the interstate movement, but that by this delivery the movement of the commodity "was merely halted as a convenient step in the process of getting it to its final destination."

Peoples Natural Gas Co. v. *Public Service Commission,* 270 U.S. 550, shows that where, as here, there is continuity of movement of a perishable commodity from one State to a purchaser in another, interstate transportation is not arrested by an intervening change in custody and title. One of the questions presented in that case was whether West Virginia natural gas which a Pennsylvania company purchased at the Pennsylvania-West Virginia boundary line and which was thereafter mingled with Pennsylvania gas was moving in interstate commerce when sold in Pennsylvania to another company supplying consumers in that State. This Court said (p. 554):

> As respects the West Virginia gas we are of opinion, in view of its continuous transportation from the places of production in one State to those of consumption in the other and its prompt delivery to purchasers when it reaches the intended destinations, that it must be held to be in interstate commerce throughout these transactions. Prior decisions leave no room for discussion on this point and show that the passing of cus-

tody and title at the state boundary without arresting the movement to the destinations intended are minor details which do not affect the essential nature of the business.

Even if we assume, as appellants contend, that the receivers purchase all poultry consigned to them, including "commission" poultry, the transfer of legal title is a minor incident facilitating the movement from shippers to marketmen and does not end the interstate journey. As this Court has said, "commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business" (*Swift & Co.* v. *United States, supra,* p. 398), and its character is determined by "practice, intent and the typical course, not title or niceties of form" (*Western Union Telegraph Co.* v. *Foster,* 247 U.S. 105, 113).

Furthermore, we submit that the receivers do not purchase "commission" poultry (representing from 80% to 98% of the whole, *supra,* p. 10), but handle it as *del credere* commission agents. The receiver is paid a commission for his services, the shipper bears certain important expenses after the poultry passes into the receiver's hands, the shipper may control the time and terms of sale, and the receiver supplies the shipper with daily information as to market conditions (*supra,* p. 10); all these facts indicate the agency nature of the relationship. If the receiver acts as the shipper's agent, sales to marketmen are clearly made in the

course of interstate commerce. *Binderup* v. *Pathe Exchange, Inc.*, 263 U.S. 291, *supra*.

Industrial Association v. *United States*, 268 U.S. 64, *supra*, upon which appellants rely, does not support their contention that interstate commerce ends when poultry arrives at the New York Central terminal or at West Washington Market. That case held that plaster shipped into California from other States to local representatives of the manufacturers or to independent local dealers, and brought to rest in warehouses and salesrooms and commingled in these warehouses and salesrooms "with the common mass of local property," is not moving in interstate commerce when subsequently sold to California purchasers as the result of new and independent arrangements not connected with the original shipment into California. This decision is clearly not applicable to the facts of the present case. We are here concerned with a rapid and ever renewing flow of a perishable commodity through the hands of the receivers; immediate sale to marketmen is directly related to and the intended sequel of the interstate shipments; and, as the Circuit Court of Appeals said in the criminal case,[13] "the receivers did not warehouse the poultry or commingle it with local goods before disposing of it."

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[13] *Greater New York Live Poultry Chamber of Commerce* v. *United States*, 47 F. (2d) 156, 158, *supra*.

II

THE CONSPIRACY WAS NOT ABANDONED BEFORE SUIT WAS FILED AND THE CONTINUOUS AND DANGEROUS PROBABILITY OF RESUMPTION OF ILLEGAL ACTIVITY THEREUNDER JUSTIFIED EQUITABLE RELIEF

The District Court which heard the testimony found that the conspiracy continued in existence up to the time of filing the amended petition in April, 1930, and for at least eleven months thereafter. (Fng. 27, R. 43.) It also found that up to the time of trial there had been a continuous and dangerous probability of resumption of the means and methods employed in carrying out the conspiracy. (Fng. 39, R. 47.) In its opinion the District Court, after stating that there had been numerous interferences with trade since 1928 and that these had been of the same type and had been enforced by the same means as those disclosed in the criminal trial, said (R. 62):

> At best, I think it can only be said that the conspirators are temporarily under cover or that the conspiracy is temporarily smoldering. That is enough in itself to afford basis for an injunction.

Upon the question of continuance of the conspiracy after August, 1928, the court also said (R. 58):

> There is ample evidence here from which it can be inferred, even though the misconduct of defendants had been sporadic only, that it was animated by the same purposes and

that it arose from or was in furtherance of the same conspiracy that had already been condemned in the criminal case.

Defendants' combination did not have as its objective merely the doing of certain specified acts, but it contemplated and required future as well as present restraint of trade. A conspiracy of this kind having continuity of purpose, once it is established, must be regarded as continuing until abandonment, and abandonment or disavowal must be affirmatively shown. *Hyde* v. *United States,* 225 U.S. 347, 369; *Nyquist* v. *United States,* 2 F. (2d) 504, 505 (C.C.A. 6th), certiorari denied, 267 U.S. 606. Such an affirmative showing of abandonment is particularly required where, as here, there have been recurrent combinations of a like character over a period of several years (*infra,* pp. 43–44).

Abandonment certainly cannot be predicated solely upon the criminal convictions. The weight of this circumstance as evidence of abandonment is to be viewed in the light of the character of the defendants and of the sentences imposed, and other factors. As the District Court observed, the sentences were "lenient" and this leniency was "misinterpreted"; in short, "the results of the criminal trial taught the defendants nothing ". (R. 59, 60.)

Although appellants in their answers formally denied continuance of the conspiracy after August, 1928, they did not themselves take the stand to support these denials by their sworn testimony. Cer-

tain evidence relating to restraints occurring after August, 1928, was open to more than one interpretation. For example, the purchase, sale and delivery of poultry in interstate commerce were interfered with after August, 1928, by the same means and by the same parties as those involved in like restraints prior to that time, but in most of these later restraints there was also evidence of a labor dispute. The defendants were charged with using, and were found to have used, the pretext of labor disputes in furtherance of the conspiracy. (R. 14–15, 55.) In the face of such evidence and such charges the defendants, although they participated actively in the trial and were advised by skilful counsel (R. 58), failed to take the stand to explain their equivocal conduct or to deny continuance of the conspiracy. Under similar circumstances this Court said of a failure to testify, "Silence is often evidence of the most persuasive character." *Bilokumsky* v. *Tod,* 263 U.S. 149, 153–154. See also *Mammoth Oil Co.* v. *United States,* 275 U.S. 13, 52–53.

We submit that the District Court properly attached importance to defendants' silence. It said (R. 58):

> The facts were peculiarly within the knowledge of the defendants, who listened as humble people poured into my ears from day to day details of the oppression they had suffered. These witnesses charged the defendants by testimony given from the stand, charged into the very ears of the de-

> fendants as they sat in this court; and yet, the defendants remained mute.
>
> The inevitable inference, under the circumstances, is that if the defendants had taken the stand, they would have been compelled to admit that they were still engaged in the conspiracy which had already been established by the jury verdict.

We turn to the facts relied upon as affirmatively showing continuance of the conspiracy and threat of further illegal activity thereunder. In June, 1929, the defendant marketmen of the East Side organized the L. W. Credit Association for the purpose of restricting competitive sales, allocating retailers among themselves, raising prices, and restraining competition in the sale of live poultry. The association [14] placed "watchers" in the markets of the East Side who, in pursuance of the plan to allocate customers and advance prices, recorded the weight of the poultry sold by the several marketmen and transmitted these reports to the association. Each marketman was allotted a specific weekly quota of sales. He was required to pay the association 4¢ a pound for each pound of poultry sold in excess of his quota and was entitled to receive from the association 4¢ a pound if his sales were less than his quota. Delegates of Local 167 required a mar-

[14] Louis Weidberg, who managed the association, was a director of the Chamber of Commerce and in 1927 and 1928 made collections for the Chamber from East Side marketmen. (R. 207, 457.)

ketman to hire additional employees in order to coerce him into adhering to the association. The association continued in existence until a few weeks before the criminal trial started in October, 1929. (Fng. 28, R. 43–44; R. 211–212, 456–458, 600–602.)

The Live Poultry Slaughter House Association, comprising most of the marketmen of the metropolitan area, was organized on September 8, 1931. (Fng. 37, R. 46; R. 477.) The members of the Slaughter House Association assigned to it 10¢ a coop of the bonus of 35¢ a coop which the New Jersey Coop Company [15] pays marketmen when they return coops in good condition to that company. (*Ibid;* R. 158.) These assignments gave the Slaughter House Association an income averaging approximately $1,400 a week for the ten-week period shown by the record (Ex. 30, R. 802), or at a rate of over $70,000 a year.[16] Some of defendant marketmen who were members of the Slaughter House Association have shown a disposition to use it as an instrumentality for continuing the conspiracy. (Fng. 37, R. 46.)

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[15] This company supplies the coops in which the poultry is put at the railroad terminals and in which it is trucked to the marketmen's places of business. (Fng. 37, R. 46.) The New Jersey Coop Company rents the coops for $1.00 a coop. (Ex. A, R. 886.) The receivers pay this rental charge, but make a deduction therefor in remitting the proceeds of sale to the shippers. (R. 363.)

[16] This is comparable to the income received from the same source by the Chamber of Commerce, amounting to $220,750 in a period of little over three years beginning November 18, 1926, and ending January 9, 1930. (Ex. 25, R. 789–791.)

A second organization formed in the fall of 1931 is the Harlem and Bronx Live Poultry Board of Trade. It included in its membership most of the marketmen doing business in Harlem and the Bronx. With the formation of this organization, the Bronx marketmen increased their prices. One marketman was prevented from obtaining poultry in West Washington Market because he resigned from this organization. (Fng. 38, R. 46–47.)

Between September 19, 1931, and some time in November, 1931, when publicity was given to the fact that trial of the present case would commence on November 16, 1931, marketmen in various sections of New York City concertedly raised their prices.[17] (Fng. 35, R. 45; R. 288–289, 534–535, 555–558, 597–599, 606–607, 611–614, 616–617, 624–626.) Whereas previously they had charged retailers from 3¢ to 5¢ more than they themselves paid receivers, after that date retailers were frequently charged from 8¢ to 12¢ above the prices which the marketmen paid the receivers. (Fng. 35, R. 45; R. 598, 611–612, 616–617, 624–625.) During this period the system of allocating customers was at least partially maintained. Marketmen either refused to sell to retailers who had regularly purchased

[17]Appellants emphasize (brief, pp. 42–43) the conflict in the testimony as to this price rise and the reasons therefor. In three instances of such conflicting testimony the District Court said that it preferred the testimony of the Government's witness to that of defendants' witness. (R. 70, 282, 532, 597, 701, 707, 727.)

from other marketmen, explaining this refusal as caused by a combination among the marketmen, or, if they sold to such retailers, they did so reluctantly. (Fngs. 35–36, R. 45; R. 285–286, 615, 625.) Marketmen admitted that if these sales were discovered the labor unions and other marketmen would give them trouble, and on some occasions regular customers were told that if they bought elsewhere, the profit would revert back to the regular marketman. (Fng. 36, R. 45–46; R. 535, 607, 617.)

There is substantial evidence of direct interference with interstate commerce after August, 1928. In February, March, April and May, 1930, the defendants prevented Aaron Steinberg from purchasing and obtaining delivery of poultry from receivers in West Washington Market and at the railroad terminals in New York and New Jersey, and from Philadelphia, Elizabeth, N.J., and Lincoln, Neb. (Fng. 29, R. 44; R. 186–192; Ex. A, R. 829–835, 839–844, 851, 854–856, 858–859, 892–893.) Defendants, as part of their plan to prevent Steinberg from obtaining poultry, threatened and assaulted one of his employees, caused the destruction of his poultry truck and prevented delivery of coops which he had ordered for the transportation of poultry from a railroad siding to his market. (Fng. 29, R. 44; R. 191, 193–194; Ex. A, R. 835, 851–852.) The District Court found that the marketmen, in refusing to sell Steinberg poultry, cooperated with the defendant labor unions to prevent him

from obtaining poultry.[18] (Fng. 29, R. 44.) The net result was a complete boycott, achieved by means and methods similar to those employed in enforcing the conspiracy prior to the criminal prosecution.

At various times during 1929, 1930 and 1931 the defendants prevented other marketmen from obtaining poultry at West Washington Market, the New York Central terminal, or Newark, N.J. (Fngs. 30–32, R. 44–45.) A marketman was prevented from buying poultry at West Washington Market and at the railroad terminals in New York and New Jersey on repeated occasions during these years and his difficulties appear to have continued during the entire period from March, 1929, to July, 1931. (R. 417–444.)

The fact that marketmen in metropolitan New York have, over a period of years, been parties to combinations in restraint of trade has a bearing upon whether there is a continuing threat of resumption of illegal activity by the defendants, justifying an injunction. *Live Poultry Dealers Protective Association* v. *United States*, 4 F. (2d)

[18]Appellants (brief, p. 35) refer to the fact that Judge Knox in the probation hearings took no action against the defendants upon the basis of Steinberg's testimony. But the District Judge in this case, who was impressed both with Steinberg's truthfulness and with his temperateness, stated, with the authorization of Judge Knox, that the latter had believed Steinberg was telling the truth; in addition, his testimony was largely corroborated. (R. 59–60; Ex. A, R. 839–859.)

840, sustained an injunction *pendente lite* forbidding a combination of New York City marketmen to purchase poultry from receivers at the price fixed each day by a committee of marketmen and to boycott receivers who did not observe the prices thus fixed. In April, 1926, the Supreme Court of Kings County, N.Y., entered an order dissolving the Community Live Poultry Corporation after a jury had found that the corporation substantially controlled the live poultry business in certain sections of New York City and that it prevented competition in the supply and price of poultry. (Ex. 47, R. 807–810.) The corporation represented from 95% to 98% of the marketmen in the section where it operated. (R. 582–583.) The Square Deal Live Poultry Corporation, formed by about 88% of the marketmen in Brownsville, was dissolved in May, 1926, by an order of the same court. (R. 589; Ex. 50, R. 826–828.) In this case the corporation consented to the dissolution proceedings brought by the Attorney General of New York. (Ex. 50, R. 826.)

An intent to restrain interstate commerce being shown, it is enough to justify equitable relief if there be a dangerous probability of future acts of restraint. The Sherman Act "directs itself against that dangerous probability as well as against the completed result." *Bedford Cut Stone Co.* v. *Stone Cutters' Association,* 274 U.S. 37, 55. In considering whether that dangerous probability exists when the defendants appear to have sus-

pended or partially suspended their activity under the conspiracy, the motives leading to such suspension are a relevant consideration.

For more than three years prior to the trial of the present case the defendants were continuously operating under the shadow of criminal and civil proceedings to punish and to enjoin their conspiracy.[19] There was the ever-present danger that overt acts in furtherance of the conspiracy would be used against them in the pending litigation. Under these circumstances, something more substantial than a partial suspension of overt acts is required to show a change in heart and purpose. In *United States* v. *United States Steel Corporation*, 251 U.S. 417, 445, this Court, in denying equitable relief, emphasized that certain price-fixing activities had been abandoned nine months before suit was brought, not "in prophecy of or dread of suit", but "from a conviction of their futility", thus inferentially indicating that a cessation of overt acts because of fear of prosecution is not satisfactory evidence of abandonment of a conspiracy in restraint of trade.

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[19] The criminal case was commenced August 20, 1928; sentences were imposed December 16, 1929; these sentences were affirmed, January 12, 1931; and this Court denied certiorari, April 20, 1931. (R. 939; Ex. 23, R. 779; 47 F. (2d) 156; 283 U.S. 837.) The present equity case, which started February 7, 1930, within two months after the criminal sentences had been imposed, came on for trial November 16, 1931. (R. 126, 130.)

When the defendants in an equity proceeding under the Sherman Act, after suit has been filed, voluntarily dissolve the association through the medium of which their restraint was effected, this does not show that they have abandoned their illegal purpose and does not extinguish rights which the Government is asserting "as a substantial trustee for the public under the act of Congress", and the case does not become moot. *United States* v. *Trans-Missouri Freight Association,* 166 U.S. 290, 307–310. The essence of a conspiracy in restraint of interstate commerce is the illegal design and purpose, not the particular instrumentalities employed. In the present case the District Court said (R. 54):

> There were three groups—the two unions and the market men. It matters not whether from time to time the form in which those groups organized themselves may or may not have changed. It matters not if from time to time the personnel of those whose activities are disclosed may or may not have shifted. * * *

It should be noted that the Federal Trade Commission may enter a cease and desist order although the unfair methods of competition against which the order is directed were discontinued before the Commission filed its complaint. *Guarantee Veterinary Co.* v. *Federal Trade Commission,* 285 Fed. 853, 859–860 (C.C.A. 2d); *Moir* v. *Federal Trade Commission,* 12 F. (2d) 22, 27 (C.C.A. 1st); *Arkan-*

sas Wholesale Grocers' Assn. v. *Federal Trade Commission,* 18 F. (2d) 866, 871 (C.C.A. 8th), certiorari denied, 275 U.S. 533.

III

THE DISTRICT COURT PROPERLY STRUCK OUT AS SHAM THE CONVICTED DEFENDANTS' DENIAL OF THE CONSPIRACY

The first 23 paragraphs of the amended petition describe the identical conspiracy described in the first 23 paragraphs of the indictment in the criminal case. (R. 30, 939.) The District Court, upon motion of the Government, struck out as sham that portion of the answers of the convicted defendants which denied the allegations contained in the first 23 paragraphs of the amended petition. (R. 29–30.) Appellants assign this ruling as error.[20]

The principle of *res judicata* is designed to prevent parties from harassing each other with unnecessary litigation and wasting the time of the courts. Adjudicated questions cannot be relitigated in a subsequent suit between the same parties "whether the second suit be for the same or a different cause of action." *Oklahoma* v. *Texas,* 256 U.S. 70, 85. To the same effect, see *Johnson Co.* v. *Wharton,* 152 U.S. 252.

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[20] Appellants Markman, Rosenman and Weiner were not convicted in the criminal case (*supra*, p. 8) and are not included in the District Court's order to strike. (R. 29.) The Government concedes that an order to strike was entered in the case of appellant Arthur Herbert although this is not shown by the record before this Court (R. 29).

In the present case the convicted defendants had been found guilty beyond a reasonable doubt of the conspiracy charged in the amended petition. Since this conviction required a higher degree of proof than a decree in the present cause requires, the jury verdict conclusively establishes, in a subsequent equity case brought by the Government alleging the same conspiracy, that the convicted defendants had committed the offense charged against them. *Farley, State Commissioner of Excise* v. *Patterson,* 166 App. Div. (N.Y.) 358; *In re Gottesfeld,* 245 Pa. 314.

The primary purpose of pleadings is to define and narrow the issues to be litigated at the trial. Pleadings which do not perform this function are objectionable and may be stricken out or treated as a nullity. *Peacock* v. *United States,* 125 Fed. 583 (C.C.A., 9th). It is a corollary of this rule that a party cannot plead what he cannot lawfully prove. *Hubbard* v. *Lowe,* 226 Fed. 135, 139 (S.D.N.Y.).

Courts take judicial notice of their own records (*United States* v. *California Cooperative Canneries,* 279 U.S. 553, 555), and allegations contrary to facts of which the court takes judicial notice may be treated as a nullity or stricken out (*French* v. *Senate of State of California,* 146 Cal. 604; *Martin* v. *Kennecott Copper Corp.,* 252 Fed. 207 (W.D.Wash.)). The District Court, by looking at its own records, ascertained that certain defendants had been adjudicated guilty of the conspiracy

charged in the amended petition. The denial of this adjudicated fact was a sham and the proper remedy was a motion to strike the denial.[21]

The District Court struck out the convicted defendants' denial of the allegations of the petition setting forth the means and methods used in effecting the conspiracy, not upon the ground that the facts therein alleged had been adjudicated against them, but upon the ground that the only allegations of the petition material as to these defendants were those setting forth continuance of the conspiracy after August 20, 1928. The District Court did not strike out the convicted defendants' denial of the latter allegations.

In any event, the convicted defendants were not prejudiced by the action of the District Court in striking a portion of their answers. The conspiracy was independently established as against the nonconvicted defendants. The Government concedes that the court, in framing a decree, must look solely to the proof in this cause and to the inferences properly to be drawn therefrom. The District Court's ruling did not bar the convicted defendants from introducing evidence to controvert that offered by the Government upon any issue

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[21] For Federal decisions sustaining the power of the court to strike out part of an answer as sham, see *Liebling* v. *Barbara B. & D. Corp.*, 52 F. (2d) 183 (S.D.Fla.); *Banco Nacional Ultramarino* v. *Newton*, 278 Fed. 207 (E.D. N.Y.); *Washington-Alaska Bank* v. *Stewart*, 184 Fed. 673 (C.C.A. 9th); *Peacock* v. *United States*, 125 Fed. 583 (C.C.A. 9th), *supra*.

material as to them, and at the trial no evidence was in fact excluded upon the ground that it was barred by the court's ruling.[22]

The power to strike out a pleading or part of a pleading as sham is not dependent upon express authorization by statute or rule of court; it is a power inherent in the court to prevent a misuse of judicial process. See *Lawrance* v. *Norreys*, 15 App. Cases, 210, 219, and cases cited in footnote 21 (*supra*, p. 49).

IV

THE PROVISIONS OF THE DECREE ARE DESIGNED TO GIVE EFFECTIVE RELIEF AND SHOULD NOT BE MODIFIED

Appellants contend (brief, p. 52) that interstate commerce ceased with the sale and delivery of poultry to marketmen and that therefore the injunction "should have been limited to acts and conduct of the defendants only in so far as the same restrained commerce to this point."

It is clear that intrastate acts may be enjoined when this prohibition is necessary or appropriate to give effective relief against a combination in restraint of interstate commerce. *Bedford Cut Stone Co.* v. *Stone Cutters' Assn.*, 274 U.S. 37, 46–47, *supra*. In *Gompers* v. *Bucks Stove & Range Co.*, 221 U.S. 418, 438–439 this Court said:

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[22] The District Court permitted Government witnesses to be cross-examined upon their testimony as to incidents prior to August, 1928. (R. 149–151, 165, 216–218, 315, 317–322, 460, 472.) The testimony of many Government witnesses at the criminal trial was introduced by stipulation and the stipulations include the cross-examination of these witnesses.

> To hold that the restraint of trade under the Sherman anti-trust act, or on general principles of law, could be enjoined, but that the means through which the restraint was accomplished could not be enjoined would be to render the law impotent.

The District Court enjoined the refusal, under defined circumstances, to load, unload, handle or slaughter poultry. (R. 80.) The justification for these injunctive provisions is that it was chiefly by means of such so-called intrastate acts and conduct that the conspiracy was enforced. Appellants have not attempted to show that the conspiracy was not enforced by these means; their sole contention appears to be that, as a rule of law, the court in a Sherman Act proceeding has no power to enjoin intrastate acts. We submit that the power of the court is not so limited, that the proper test is not whether the acts enjoined are, considered by themselves, intrastate or interstate, but whether such acts have been used and are likely to be again used to effect a restraint of interstate commerce. Furthermore, in considering whether particular remedies are necessary or appropriate for efficacious relief, doubt is to be resolved against the defendants. In *Warner & Co.* v. *Lilly & Co.*, 265 U.S. 526, 532, the Court said:

> But respondent being entitled to relief, is entitled to effective relief; and any doubt in respect of the extent thereof must be resolved in its favor as the innocent producer and against the petitioner, which has shown by its conduct that it is not to be trusted.

The District Court, which heard and saw the witnesses, was in a better position than is this Court to appraise the nature and extent of the relief which should be granted. The court in its opinion said that, in view of the failure of previous efforts by the State and Federal governments to deal with the same situation and in view of defendants' misunderstanding of the leniency in the criminal case, an effective decree ought to be entered "so that the court may at least thereby make an effort to bring the defendants to a course of conduct that is in harmony with the law." (R. 72–73.) We submit that it did not overstep the limits of its discretionary power in extending the prohibitions of the injunction beyond the point where poultry reaches the marketmen. The reasons for not thus limiting the prohibitions of the decree are stated in the "Comments on Decree" which the District Court filed when it signed the decree. It said (R. 82):

> As pointed out at the trial, in my statement of the grounds for my decision, the condemned conspiracy embraced intrastate as well as interstate commerce. It was only by comprehending both types of commerce in a single plan that its unlawful purpose could be accomplished. When the conspirators, in violation of the Sherman Act, trespassed into the Federal field, the Government became entitled to the assistance of this court in an effort to prevent restraint of interstate commerce. Upon the facts as they have been demonstrated, the attempt to re-

establish freedom of interstate commerce from restraint would be futile if intrastate commerce were omitted from the decree.

Appellants (brief, p. 51) also attack paragraph (1) of the decree, which prohibits use of the offices or positions of the defendant unions for the purpose of coercing marketmen to buy poultry, poultry feed, or other commodities necessary to the poultry business from particular sellers. Appellants contend that there is no evidence that the defendants had employed or had threatened coercion of this character. We submit that there was evidence from which the District Court might infer that union delegates had, as a part of the conspiracy, used coercive methods to compel marketmen to use the coops of the New Jersey Coop Company.

The New Jersey Coop Company has a complete monopoly of the business of supplying coops for transporting poultry from the railroad terminals and from West Washington Market to the various markets in New York City. (Ex. A, R. 886.) The monopoly appears to be extremely lucrative. The New Jersey Coop Company receives a net rental of 65¢ each time its coops are used, but there was evidence that coops could be bought for $1.65 a coop and used 20 or 30 times. (R. 158; Ex. A, R. 832, 833, 886.) When coops which a marketman had purchased from a box company in Newark arrived at the marketman's place of business, a delegate of the Shochtim Union and two delegates of Local 167 prevented their delivery. (Ex. A,

R. 833, 851.) The evidence indicates that a short time before this incident the New Jersey Coop Company had asked this marketman to pay the exorbitant rental of $1.65 a coop, and had ultimately refused to let him have coops because he did not have union men. (Ex. A, R. 832–833.)

Other incidents and circumstances indicate a close relationship between the New Jersey Coop Company and the defendant unions and marketmen (when both of the latter groups were engaged in a common conspiracy), and support the inference that the unions were helping to enforce the Coop Company's monopoly. Thus, the manager of the Coop Company, after undertaking to arbitrate a dispute between Steinberg and the defendant unions, personally guaranteed that the unions would carry out any agreement which they made. (Ex. A, R. 884–885.) After a union delegate had told Steinberg that it was possible for him to employ only two members of Local 167 and one shochet, as Steinberg wished, the manager of the Coop Company rejected a settlement on this basis. (R. 200.) The Coop Company's close relationship with the defendant marketmen is shown by the fact that it was the instrumentality through which the Chamber of Commerce and a later organization of marketmen collected dues from their members amounting to about $70,000 a year. (R. 158; Ex. 25, R. 789–791; Ex. 30, R. 802.) This relationship is further shown by the fact that at least one of the defendant marketmen convicted in the criminal case

borrowed from the Coop Company the money to pay his fine. (R. 688.)

V

THE DECREE WAS PROPERLY ENTERED AGAINST APPELLANTS MARKMAN, ROSENMAN, AND WEINER

Appellants raise a question as to the sufficiency of the evidence connecting Morris Markman, Joseph Rosenman and Joseph Weiner with the conspiracy. The District Court said that of the non-convicted defendants the one whose case gave him the most trouble was Joseph Rosenman. (R. 63.) This defendant is secretary of the Shochtim Union. (R. ~~84~~ 506.) Louis Weidberg, who collected for the Chamber of Commerce from the East Side marketmen, paid this defendant $100 a week.[23] (R. 207, 210; Ex. 21, R. 764–767.) Another witness testified that in July, 1927, when he wanted a shochet, he was told by Rosenman to see Benjamin Simon,[24] the Supervisor of the Chamber of Commerce "and if he says we could give you a shochet we will give you one." (R. 449.) At a later time the same witness went to the Shochtim office and was again told by Rosenman to go to Benjamin Simon and if the latter said that the wit-

[23] Compare the payments of $75 a week made by each district to Shapiro, president of the Shochtim Union, in order that "Shapiro should do whatever he is asked to do." (R. 23, 145.)

[24] The District Court said, "From the state in which the proof is left, there is inescapable the suspicion that Benjamin Simon was nothing but a nefarious grafter." (R. 66.)

ness should have a shochet, he would be given one. (R. 454.) A shochet testified that in 1928 he was without a job until he was able to approach Benjamin Simon, when the latter forced the president and secretary (Rosenman) of the Shochtim Union to give him a job. (R. 500.) Rosenman, when he then gave the shochet a card, said to him, "Do not ask any questions, but as long as you slaughter for even one butcher you will be taken away from your job." (*Ibid.*) About a week after the criminal trial, where this testimony was given, Rosenman threatened to punch this witness for having testified against him. (R. 499, 505.)

We submit that the foregoing evidence sufficiently connects Joseph Rosenman with the conspiracy. The only evidence in the record of the detailed payments made from funds collected from marketmen shows weekly payments to this defendant; he took orders in union matters from the supervisor of the Chamber of Commerce; he sat in court throughout the trial but did not testify (R. 64).

We submit that Joseph Weiner, a delegate of the Shochtim Union (R. 256), is also shown to be implicated in the conspiracy. At a time when Mack Harnett could not get poultry Weiner told him to take four members of Local 167 and two shochtim (R. 310–311), and the circumstances show that the union demand that Harnett employ this number of union men was a form of coercion to compel him to abide by the conspiracy. Weiner's

conversation with Harnett took place after Charles and Arthur Herbert, delegates respectively of Local 167 and the Shochtim Union, had walked into Harnett's place of business and ordered his union men out on a false charge of violating union rules the day after the president of the Chamber of Commerce had accused Harnett of selling to strange customers. (R. 301–302, 305.) Following this occurrence, Harnett could not obtain poultry at West Washington Market, the New York Central terminal or the New Jersey terminals, but as soon as Harnett had agreed with the president of the Chamber not to sell wholesale, i.e., as a marketman, he was able to purchase poultry. (R. 302–303, 308.) That Weiner's demand that Harnett employ two shochtim and four members of Local 167 was not incident to a mere labor dispute is also shown by the fact that prior to the time that Harnett's men were called out by the union delegates, he had employed, without objection by Weiner, one member of the Shochtim Union and one member of Local 167, and he did not need in his business more than this number of employees. (R. 311.)

Weiner was on the pay roll of the Chamber of Commerce two or three weeks in the summer of 1927 at $75 a week. (R. 152.) The witness first said that Weiner had no duties to perform while so employed; he later said that Weiner was employed (although a union delegate) to represent marketmen in a controversy with the union. (R. 152, 165.)

In addition, there is the testimony of Barney Hecht connecting Weiner with various aspects of the controversy.[25] (R. 400, 416, 417.) While the District Court called this witness scatterbrained, exaggerated, and vague, it also believed he was telling the truth. (R. 68.) He testified that in March, 1929, the Supervisor of the Chamber of Commerce told him that he could not get poultry unless he paid the Chamber $50 a week; that he would have to do whatever the "gangsters" said; that Joseph Weiner was one of the three gangsters named. (R. 421.)

The third appellant as to whom a question of the sufficiency of the evidence is raised is Morris Markman. Both in the petition and in the decree he is listed among the defendants as "Morris Markman (alias 'Nigger')", no other defendant having a similar alias. (R. 7–8, 77.) In the criminal case this same individual was indicted as "Joe Goldman (alias 'Nigger')". (Ex. 7[26], pp. 24, 585, 629.)

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[25] On one occasion during the trial this witness identified another defendant as being Joseph Weiner, but he later identified defendant Weiner as one of the men who had picketed his place. (R. 416, 417.)

[26] By stipulation, this exhibit, which is the record on appeal to the Circuit Court of Appeals in the criminal case, is not printed as part of the present record but may be referred to in argument before this Court. (R. 940.) The exhibit was admitted in evidence for the limited purpose of supplementing the judgment roll in the criminal case by way of identification or elaboration of the issues there involved. (R. 754.)

Certain testimony given by Barney Hecht at the criminal trial was received in evidence in this case. (R. 400.) Hecht there testified that when he went to the New York Central terminal to get poultry, "Nigger" Goldman (whom he identified as defendant Goldman) came up and said, "Don't go in the yard, you are on the blacklist, you can't get any poultry"; that Goldman told him to go and see Benjamin Simon (supervisor of the Chamber of Commerce) or Tootsie Herbert (a delegate of Local 167). (R. 403.) Hecht also testified that on the preceding day a man named "Nigger" at the New York Central terminal had told Hecht that he was on the blacklist; that he could not get any more poultry; that he had better see Simon or Tootsie Herbert, who would tell him whether or not he could get poultry. (R. 402.)

CONCLUSION

It is respectfully submitted that the decree below should be affirmed.

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DECEMBER, 1933.

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SUPREME COURT OF THE UNITED STATES.

No. 6.—October Term, 1933.

Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, Carl Firestone, Charles Gershowitz, et al., Appellants,
vs.
The United States of America.

Appeal from the District Court of the United States for the Southern District of New York.

[February 5, 1934.]

Mr. Justice Butler delivered the opinion of the Court.

The decree appealed from is an injunction against a conspiracy commenced in May, 1927, by the appellants and others to restrain and monopolize interstate commerce in live and freshly dressed poultry in violation of §§ 1 and 2 of the Sherman Anti-Trust Act, 15 U. S. C., §§ 1, 2. Most of the issues were litigated before the same court in a criminal prosecution commenced August 28, 1928. Sixty-five of the defendants in this case were there convicted November 21, 1929. The Circuit Court of Appeals affirmed.*

This suit was commenced February 7, 1930. The defendants are the Greater New York Live Poultry Chamber of Commerce, Local 167 of the International Brotherhood of Teamsters, Chauffeurs, Jobbers and Stablemen of America, the Official Orthodox Poultry Slaughterers of America, Inc., called the shochtim union, and 100 individuals, 75 of whom are wholesalers, hereafter called marketmen. The Chamber is an association of marketmen. The members of Local 167 haul live poultry. Shochtim are the only persons qualified to slaughter poultry in accordance with Jewish dietary laws; they are employed by the marketmen.

Live poultry for sale and consumption in the New York metropolitan area continuously moves in great volume from points in distant States to commission men, called receivers, at railroad terminals in Manhattan and Jersey City. The receivers sell to

*47 F. (2d) 156. Certiorari denied, 283 U. S. 827.

marketmen. The larger part of the poultry is delivered directly from the cars; the remainder from stands maintained by the receivers. The purchasers have the coops loaded on trucks and hauled to their places of business where, without avoidable delay, they sell, slaughter and deliver to retailers. Marketmen organized the Chamber of Commerce and allocated retailers among themselves and agreed to and did increase prices. The Chamber, through a levy of a cent a pound upon poultry sold by the marketmen, raised money—more than $1,000,000 in the first year—to pay for enforcement activities. To accomplish various purposes of the conspiracy, the conspirators hired men to obstruct the business of dealers who resisted. They spied on wholesalers and retailers and by violence and other forms of intimidation prevented them from freely purchasing live poultry. And, for like purpose and to extort money for themselves and their associates, members of Local 167 refused to handle poultry for recalcitrant marketmen, and members of the shochtim union refused to slaughter.

The petition contains allegations identical with those of the indictment as to the conspiracy and the means used to carry it into effect. The convicted defendants denied all the material allegations. On the Government's motion the court struck out as sham their denials of the conspiracy prior to the commencement of the criminal prosecution but let stand their denials of its continuance after that date. Decree was entered against 52 defendants by consent. Among the 49 resisting were the Chamber of Commerce, Local 167, the shochtim union and 29 individuals who had been convicted. At the conclusion of the evidence the trial judge in an oral opinion stated that, except as to two individual defendants, every material allegation had been proved. In accordance with that ruling the court later made findings of fact, stated its conclusions of law and entered a comprehensive decree. Only Local 167, the shochtim union and 14 individuals, members of the one or the other union, have appealed.

In their brief and oral argument appellants contend: (1) there is no proof that they intended to restrain or did interfere with interstate commerce; (2) if ever concerned in the conspiracy, they voluntarily abandoned it before this suit was commenced, and there is no probability of resumption; (3) there is no credible evidence against Weiner, Rosenman and Markman; (4) the court erred in striking out as sham the denials of convicted defendants; (5) the

decree should be modified by eliminating a paragraph that enjoins them in respect of both interstate and intrastate commerce and by limiting the injunction to interstate commerce.

The assignment of errors includes more than 250 specifications and occupies more than 35 pages of the record. While it is possible to find among them bases for the five points indicated, they contain so much that is irrelevant that they tend to confuse rather than to define the issues to be presented. They do not appropriately serve the convenience of the appellee or of the court. *Phillips, etc. Const. Co.* v. *Seymour*, 91 U. S. 646, 648. *Central Vermont Ry.* v. *White*, 238 U. S. 507, 508. *Ches. & Del. Canal Co.* v. *United States*, 250 U. S. 123, 124. *Seaboard Air Line Ry.* v. *Watson*, 287 U. S. 86, 91. In view of the omission of appellee to object and the lack of precedent definitely in point we refrain from dismissing the appeal for failure substantially to comply with the statute and our rule in respect of the assignment of errors. 28 U. S. C., § 862. Rule 9. But what is here said is to be understood as an announcement that in the future a failure of that sort may be taken as sufficient ground for dismissal.

Appellants' contention that there is no proof that they intended to restrain or did interfere with interstate commerce has no merit.

The evidence shows that they and other defendants conspired to burden the free movement of live poultry into the metropolitan area. It may be assumed that some time after delivery of carload lots by interstate carriers to the receivers the movement of the poultry ceases to be interstate commerce. *Public Utilities Comm.* v. *Landon*, 249 U. S. 236, 245. *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298, 309. *East Ohio Gas Co.* v. *Tax Comm.*, 283 U. S. 465, 470-471. But we need not decide when interstate commerce ends and that which is intrastate begins. The control of the handling, the sales and the prices at the place of origin before the interstate journey begins or in the State of destination where the interstate movement ends may operate directly to restrain and monopolize interstate commerce. *United States* v. *Brims*, 272 U. S. 549. *Coronado Co.* v. *U. M. Workers*, 268 U. S. 295, 310. *United States* v. *Swift & Co.*, 122 Fed. 529, 532-533. Cf. *Swift & Company* v. *United States*, 196 U. S. 375, 398. The Sherman Act denounces every conspiracy in restraint of trade including those that are to be carried on by acts constituting intrastate transactions. *Bedford Co.* v. *Stone Cutters Assn.*, 274 U. S. 37, 46. *Loewe* v. *Lawlor*,

208 U. S. 274, 301. The interference by appellants and others with the unloading, the transportation, the sales by marketmen to retailers, the prices charged and the amount of profits exacted operates substantially and directly to restrain and burden the untrammelled shipment and movement of the poultry while unquestionably it is in interstate commerce.

Appellants' contention that the proof shows that they abandoned the conspiracy before the commencement of this suit cannot be sustained.

The conspiracy was not for a temporary purpose but to dominate a great and permanent business. It was highly organized and maintained by the levy, collection and expenditure of enormous sums. In the absence of definite proof to that effect, abandonment will not be presumed. *Hyde* v. *United States,* 225 U. S. 347, 369. *Nyquist* v. *United States,* 2 F. (2d) 504, 505. The Government introduced substantial evidence which uncontradicted and unexplained tends to show that the conspiracy and appellants' participation continued until the filing of the amended complaint. They were present in court but failed to testify in their own defense. It justly may be inferred that they were unable to show that they had abandoned the conspiracy and did not intend further to participate in it. Under the circumstances of this case their silence rightly is to be deemed strong confirmation of the charges brought against them. *Mammoth Oil Co.* v. *United States,* 275 U. S. 13, 52. *Bilokumsky* v. *Tod,* 263 U. S. 103, 111.

There was evidence tending to show that Weiner, Rosenman and Markman were connected with the conspiracy. All were present but none testified. As on cross-examination full disclosure would have been called for, failure to take the witness stand strongly suggests that they could not give an account of their conduct that would be consistent with the denial interposed by answer or tend to repel what had been shown against them. The district court rightly held them to be parties to the conspiracy.

The judgment in the criminal case conclusively established in favor of the United States and against those who were found guilty that within the period covered by the indictment the latter were parties to the conspiracy charged. The complaint in this suit includes the allegations on which that prosecution was based. The defendants in this suit who had been there convicted could not require proof of what had been duly adjudged between the parties.

And, to the extent that the answers attempted to deny participation of convicted defendants in the conspiracy of which they had been found guilty, they are false and sham and the district court rightly so treated them. *Oklahoma* v. *Texas*, 265 U. S. 70, 85. Cf. *Coffey* v. *United States*, 116 U. S. 436, 442. *Stone* v. *United States*, 167 U. S. 178, 184.

Appellants seek elimination of the provision of the decree that enjoins them from using any of the offices or positions in Local 167 or the shochtim union "for the purpose of coercing marketmen to buy poultry, poultry feed, or other commodities necessary to the poultry business from particular sellers thereof". The United States is entitled to effective relief. To that end the decree should enjoin acts of the sort that are shown by the evidence to have been done or threatened in furtherance of the conspiracy. It should be broad enough to prevent evasion. In framing its provisions doubts should be resolved in favor of the Government and against the conspirators. *Warner & Co.* v. *Lilly & Co.*, 265 U. S. 526, 532. The evidence shows that delegates of the unions coerced marketmen to use coops of a company that had or sought to secure a monopoly of such facilities and charged excessive rentals for them. The lack of specific evidence that coercion has been practiced or is threatened in respect of every detail or commodity is no adequate ground for striking out the clause or for limiting it to a mere specification of the coops. Having been shown guilty of coercion in respect of the coops in which poultry is kept and fed, appellants may not complain if the injunction binds generally as to related commodities including feed and the like. When regard is had to the evidence disclosing the numerous purposes of the conspiracy and the acts of coercion customarily employed by defendants, it is plain that the clause referred to cannot be condemned as unnecessary or without warrant.

And, maintaining that interstate commerce ended with the sales by receivers to marketmen, appellants insist that the injunction should only prevent acts that restrain commerce up to that point. But intrastate acts will be enjoined whenever necessary or appropriate for the protection of interstate commerce against any restraint denounced by the Act. *Bedford Co.* v. *Stone Cutters Assn., ubi supra. Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 438. In this case the evidence fully sustains the decree.

Affirmed.

~~Mr. Justice Stone concurs in the result.~~